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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

RELIGIOUS TECHNOLOGY CENTER, a California corporation, and CHURCH OF SCIENTOLOGY INTERNATIONAL, INC., a California corporation,

Petitioners,

vs.

LARRY WOLLERSHEIM, an individual; DEDE REISDORF, an individual; RICHARD OFSHE, an individual; MARGARET SINGER, an individual; HARVEY HABER, an individual; CHARLES B. O'REILLY, an individual, LETA SCHLOSSER, an individual; GREENE, O'REILLY, BROILLET, PAUL, SIMON, McMILLAN, WHEELER and ROSENBERG, a California corporation; and DOES 1 through 100, inclusive,

Defendants,

JON ZEGEL, an individual; DAVID MAYO, an individual; CHURCH OF THE NEW CIVILIZATION (dba ADVANCED ABILITY CENTER), a California corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Is a private plaintiff entitled to equitable relief under the civil remedy provisions of the Racketeer Influenced and Corrupt Organization Act (18 U.S.C. §1964).

2. Can religious materials constitute a protectable trade secret under the provisions of the California Trade Secrets Act (Cal. Civ. Code §3426.1(d)).

3. Does the Ninth Circuit's denial to Petitioners the protection afforded by the California Trade Secrets Act (Cal. Civil Code §3426) merely because of Petitioners' status as religious entities violate the provisions of the First, Fifth and Fourteenth Amendments to the United States Constitution.

RULE 28.1 LIST

Counsel of record for Petitioners hereby notifies this Court that all the Missions and Churches of Scientology throughout the world and related corporate entities have an interest in the outcome of this opinion.

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Defendants,

JON ZEGEL, an individual; DAVID MAYO, an individual; CHURCH OF THE NEW CIVILIZATION (dba ADVANCED ABILITY CENTER), a California corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Religious Technology Center and the Church of Scientology International hereby petition this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit that reversed United States District Court Judge Mariana R. Pfaelzer's issuance of a preliminary injunction based on the Racketeer Influenced and Corrupt Organization Act (18 U.S.C. §1961 et. seq.) and the California Trade Secrets Act (Cal. Civ. Code §3426 et. seq.).

OPINIONS BELOW

The order of the District Court, granting Petitioners their requested preliminary injunction, is set forth in Appendix A, 1. The opinion of the Ninth Circuit Court of Appeals, reversing the grant of the preliminary injunction and

their denial of the petition for rehearing, are set forth in Appendix B, 14.

JURISDICTION

Injunctive relief was granted by the District Court on November 23, 1985, based on Petitioners' claims for violation of the Racketeer Influenced and Corrupt Organization Act (18 U.S.C. §1961 et. seq.) and for violation of the California Trade Secrets Act. (Cal.Civ. Code §3426 et. seq.). The judgment of the Court of Appeals for the Ninth Circuit was entered on August 8, 1986, reversing the grant of preliminary injunctive relief. The Court of Appeals then denied a Petition for Rehearing on October 7, 1986 and this petition for certiorari has been filed within 90 days of that date. This Court has jurisdiction pursuant to the provisions of 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The specific statutory provisions in question include the civil remedies provision of the Racketeer Influenced and Corrupt Organization Act (18 U.S.C. §1964) and the California Trade Secrets Act (Cal.Civ.Code §3426.1(d)). These statutes are set forth in Appendix C, 83. This action also involves the First, Fifth and Fourteenth Amendments to the United States Constitution. In particular, this action concerns Petitioners' Freedom of Religion, Due Process and Equal Protection rights. These constitutional provisions are set forth in Appendix D, 87.

STATEMENT OF THE CASE

A. Factual Background

This action involves the theft of

Petitioners confidential documents and the subsequent transfer of them to the Defendants in this action.[1/] The District Court, applying neutral principles of law, made an in-camera comparison between the documents in Defendants' possession and the original stolen documents, and found that the Defendants' documents could not have been created without reference to the materials that were stolen from the Petitioners. The District Court stated

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1 On December 9, 1983, Defendants in the consolidated and co-pending action, entitled Religious Technology Center, et al. v. Robin Scott, et al., CV No. 85 711 MRP(Bx), Robin Scott, Ron Lawley and Morag Bellmaine entered the Church of Scientology Advanced Organization, St. Hill, Europe and Africa, located in Copenhagen, Denmark, under false pretenses, introduced themselves as authorized officials of the Church, and took, without consent, numerous copies of Petitioners' confidential materials.

Thereafter, Scott, Lawley, and Bellmaine conspired to transport and sell these stolen confidential materials to [Footnote Cont'd]

that it found the contents of these documents to consist of a methodology that was protectable as a trade secret.

During a two day evidentiary hearing before the District Court, Petitioners established that, as early as 1983, the Defendants unlawfully conspired to misappropriate, use, and threaten to disseminate certain of Petitioners' confidential and proprietary materials; and they did so in furtherance of a common plan and design to possess, use, and disseminate the stolen materials for

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[Footnote 1 Cont'd]
the Defendants in this Petition, The Church of the New Civilization, d/b/a Advanced Ability Center (AAC), Harvey Haber, Jon Zegel, and David Mayo. The District Court was presented with evidence of numerous international phone calls by and between the Defendants on and around the day of the theft in Denmark as well as written memoranda in which negotiations between the Defendants were set forth for the transfer of these stolen documents to the Defendant AAC.

the purpose of obtaining an unfair advantage.

The District Court concluded that a nexus existed between the documents stolen in Denmark and the documents in Defendants' possession and that Defendants' possession, use, and dissemination of Plaintiffs' confidential materials would irreparably injure Petitioners since public dissemination of their confidential materials would render Petitioners forever at a loss to maintain the confidentiality of the materials. Defendants, however, would be merely prohibited from profiting from their ill-gotten gains. Based on the imminent threat, the economic value of the materials, and the prospective advantage those materials confer, injunctive relief was granted on November 23, 1985.

The District Court stated in its

findings: "The Court views this as a stolen documents case, and the theft appears to be as much for economic as for doctrinal reasons." (See, Appendix A, 8)

Thereafter the Respondents appealed the District Court's issuance of the Preliminary Injunction.

In response to a direct inquiry from the Ninth Circuit, the District Court stated that the basis of its injunction was both Petitioners' cause of action for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et. seq. (hereinafter "RICO") and Petitioners' claim for trade secret misappropriation. (See Appendix A, 9).

B. The Ninth Circuit's Ruling

The Ninth Circuit on August 8, 1986, reversed the issuance of the preliminary

injunction by the District Court. The Court of Appeals held that private litigants are not entitled to injunctive relief under RICO (18 U.S.C. §1964) and that confidential religious materials cannot constitute a protectable trade secret, since the Court viewed the materials as lacking commercial value merely because they were owned by a religious non-profit organization. The Ninth Circuit then denied a Petition for Rehearing with A Suggestion for Rehearing en banc.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit has ruled that private plaintiffs are not entitled to injunctive relief under RICO. The ruling of the Court is inconsistent with the plain language of the RICO statute, it's legislative history, it's statutorily

mandated liberal construction, decisions in other circuits, and the thrust of this Court's decision in Sedima, S.P.R.L. v. Imrex Co. Inc., 105 S.Ct. 3275 (1985). It also promises to frustrate Congress' primary objective in enacting RICO: the elimination of organized crime, since district courts will be effectively hamstrung if they can do no more than award money damages, particularly, as here, where victims of crime demonstrate irreparable harm.

Accordingly, based on a conflict of decisions among the circuits on the availability of injunctive relief to private plaintiffs under the RICO Act, and the overall importance of this issue, the Court should grant Certiorari.

Petitioners also seek a Writ of Certiorari to reverse the Ninth Circuit's

first impression ruling that religious materials, merely because they are owned by non-profit religious organizations, are not protectable under the California Trade Secret Act. By refusing to grant a religious organization the same protection afforded all other entities, the Ninth Circuit has denied Petitioners equal protection and due process of the the law in violation of Petitioner's rights under the Fifth and Fourteenth amendments, and has effectively prevented Petitioners' free exercise of their religion in violation of the First Amendment. These are additional issues with potentially far reaching national consequences for all religious and non-profit organizations and is in direct conflict with the ruling of the Fourth Circuit in Purcell v. Summers, 145 F.2d

979 (4th Cir. 1944), which held that:

> [The] principles [of unfair competition] ordinarily applied in the case of business and trading corporations are equally applicable in the case of Churches and other religious and charitable organizations.

Id. at 985.

Accordingly, Petitioners seek a Writ of Certiorari to review this denial of Petitioners' First, Fifth and Fourteenth Amendment Rights.

I.

WHETHER DISTRICT COURTS MAY ISSUE INJUNCTIONS IN CIVIL RICO CASES TO PROTECT PRIVATE PARTIES IS AN IMPORTANT QUESTION OF NATIONAL SIGNIFICANCE

This Court recently recognized in its Sedima decision that the utilization of RICO's civil provisions by victims of patterns of criminal conduct is now "familiar history." 105 S.Ct at 3277-78.

Whether those civil provisions permit or preclude equitable relief for RICO victims is fundamental to RICO's effective functioning. It is, obviously, an issue of national significance.2/

In Sedima, this Court observed that RICO's remedial purposes "...are nowhere more evident than in the

2. The availability of injunctive relief in private RICO suits has been the subject of considerable attention by commentators most of whom reject the suggestion of some courts that the statute denies to the courts the power to grant all forms of needed relief. See, e.g, Belgard, Private Civil RICO Plaintiffs Are Entitled to Equitable Relief Under Sec. 1964(a), 2 RLR 537 (1985); Blakey, The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg, 58 Notre Dame L. Rec. 237, 330-341 (1982); Blakey and Gettings, Racketeer Influenced and Corrupt Organizations (RICO) Basic Concepts - Criminal and Civil Remedies, 53 Temple L.Q., 1009, 1017-21, 1047 (1980); Bridges, Private Litigation Based Upon "Fraud in the Sale of Securities", 18 Ga. L.Rev. 43, 74-77 (1983); Fricano, Civil RICO: In Antitrust Plaintiff's Considerations, [Footnote Cont'd]

provisions of a private action for those injured by racketeering activities." 105 S.Ct. at 3286. Yet, the Ninth Circuit's decision embraces a profoundly restrictive reading of the ability of courts to

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[Footnote 2 Cont'd]
Antitrust Plaintiff's Considerations, 52 Antitrust L.J. 361 (1983); Johnson, Predatory Rights: Multiple Remedies for Wall Street Sharks under the Securities Law and RICO, 10 J. of Corp. L. 3, 62-76 (1984); Long, Treble Damages for Violations of the Federal Securities Laws: A Suggested Analysis and Application of the RICO Civil Cause of Action, 85 Dick L. Rev. 201, 205 (1981); Note, The Availability of Equitable Relief in Civil Causes of Action in RICO, 59 Notre Dame L. Rev. 945 (1984); Note, Civil RICO: The Temptation and Impropriety of Judicial Restriction, 95 Harv. L. Rev. 1101 (1982); Strafer, Massumi, Skolnick, Civil RICO in the Public Interest: "Everybody's Darling", 19 Am. Crim. L. Rev. 655, 709-715 (1982); Weissman, In the High Stakes Game of Civil RICO, Can Private Claimants Raise the Ante Even Further With Claims for Equitable Relief?, 1 RLR 234 (1984); Wexler, Civil RICO Comes of Age: Some Maturation Problems and Proposals for Reform, 35 Rutgers L. Rev. 285, 311-24 (1983). Professor Johnson's piece in the Journal of Corporation Law is the most comprehensive and carefully written.

enforce federal law in RICO cases.

While expressly conceding that finding the existence of equitable relief was a plausible reading of RICO and that precluding parties from obtaining equitable relief, even where the prospect of irreparable harm is present, "hamstrings the statute's effect," the Court, nevertheless, ruled against Petitioners.

The consequence of the Ninth Circuit's decision is deeply troubling. A primary objective of RICO, to curtail organized crime, will be thwarted if petitioners are denied an effective preliminary vehicle to prevent the dissipation of assets pending judgment against such defendants. Ironically, it will be the "white collar" defendant, with established and visible assets, who

will present the better opportunity for satisfication of a judgment than the more elusive defendant associated with organized criminal activity or "fly by night" fraudulent schemes.

RICO's private enforcement mechanism was, of course, "intended by Congress... to encourage private enforcement of the laws on which RICO is predicated...[and to] provide strong incentives to civil litigants...in deterring racketeering." Alcorn County, Miss. v. U.S. Interstate Supplies, 731 F.2d 1160 at 1165 (5th Cir. 1984). The effect of the Ninth Circuit's decision will mean that relief will only be available by way of other parallel federal or state claims, hardly an attractive prospect. As a practical matter, those litigants and the courts may find themselves immersed in

increasingly complex RICO cases struggling over scope of relief and pendent state claims.

The implications of that prospect require examination. The existence of pendent party jurisdiction, for example, was termed a subtle and complex question in Moor v. County of Alameda, 411 U.S. 693, 713-16 (1973) (issue noted, but not resolved). The doctrine of pendent jurisdiction, too, is "a doctrine of discretion, not...right." United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966). No litigator will be able, therefore, to know in advance whether a particular court will choose to exercise it. Uncertainty will be the result, and in light of some district courts' hostility to RICO, that uncertainty may altogether too often be resolved by

throwing out the pendent claims. In such cases, parallel state suits designed to secure assets will result in complex parallel and split proceedings with numerous claim and issue preclusion complications.

Assuming, on the other hand, that the district court chooses to exercise pendent jurisdiction, or that another parallel federal claim or diversity jurisdiction is present, equitable jurisdiction will be exercised under a body of federal and state law that Congress has already found to be inadequate in the context of RICO-type claims. See, 84 Stat. 923 (1970) ("Sanctions and remedies...unnecessarily limited in scope and impact"); United States v. Turkette, 452 U.S. 576 at 586 (1981) (Because "state and federal

[law] was not adequate," Congress enacted RICO).

The result that would be obtained by an effort to obtain prejudgment attachment under Rule 64, Federal Rules of Civil Procedure, is not more attractive. Rule 64, of course, explicity excludes federal statutes like RICO. But where no federal statute is applicable, the matter is governed by state law. The availability of preliminary equitable relief varies widely from state to state, usually depending "upon each state's attitude toward the debtor - creditor relationship." 7 J. Moore & J. Lucas, Moore's Federal Practice, Para. 64.04 [3] at 64-13 (2d ed. 1948).

More than a little irony, too, accompanies these results. RICO's core

concern is, of course, with organized crime activities, even though it constitutes general reform that applies across the board. The government's experience with efforts to forfeit assets in organized crime type prosecutions is, therefore, illuminating. Even with the pre-verdict seizure orders of 18 U.S.C. §1963(b) or 21 U.S.C. §848(d), its success in seizing assets for forfeiture has been limited. See, e.g., Forfeiture of Narcotics Proceeds, Hearings before the Senate Subcomm. on Criminal Justice, Comm'n on the Judiciary, 96th Cong. 2nd Sess. 96-96, 114 (1980) (testimony of deputy assistant attorney general).

The specter of inconsistent results from case to case is also present. RICO's requirement of racketeering activity that may well extend across

state lines makes it that "unusual case" in which a claim may be thought to arise in more than one district. Leroy v. Great Western United Corp., 443 U.S. 173, 185 (1979). Under RICO's nationwide service of process and venue provisions, ample room will exist, therefore, for forum shopping by the skillful litigator to avoid the unfavorable law of a particular forum.

Accordingly, it is doubtful that a private party, who may be forced to wait until a verdict to secure his ability to execute his money damage award, will collect anything, or for that matter, even bother to sue in the organized crime area. Only skillful forum shopping, not the merits of his claim, will offer him much hope of success.

The Ninth Circuit's decision also

means that district courts will be unable to utilize injunctions to curtail ongoing continuing crime. "The target of [RICO] is ...not sporadic activity", Sedima, 105 S.Ct. at 3285 n.14. In cases where legitimate businesses have been infiltrated through a pattern of racketeering activity, a core concern of RICO, an award of treble damages is akin to compensating a victim for his suffering without curing the disease. The Ninth Circuit itself recognized:

> a private injunctive remedy would permit an injured party to put an immediate stop to racketeering behavior that threatens his or her business with economic destruction before the business has been brought to it's knees. While the treble damages remedy is a potent weapon, it necessarily assumes that economic injury has occurred. The preventive effect of injunctive relief is often a more just remedy.

796 F.2d at 1076.

In cases where the injury is irreparable, injunctive relief may be the only meaningful remedy. Congress cannot be believed to have denied this type of relief on a remedial statute whose provisions must be liberally construed.

II.

THE NINTH CIRCUIT'S DECISION CONCERNING THE AVAILABILITY OF PRIVATE INJUNCTIVE RELIEF WILL ADD TO THE CONFLICT AMONG THE COURTS

The Ninth Circuit characterized its decision against finding the availability of private equitable relief as "essentially" one of first impression. Nevertheless, the Courts of other Circuits have in fact expressed conflicting approaches to the issue, creating an increased climate of uncertainty for district courts and

litigants. This Court should grant certiorari to resolve this uncertainty.

The Ninth Circuit decided that district courts lack jurisdiction to issue private injunctive relief in civil RICO cases by finding that Section 1964(c), in setting out a remedy of damages and fees for private plaintiffs, carried with it "the negative implication [that] no other remedy was intended to be conferred." 796 F.2d at 1082-83 (emphasis in original). While the Ninth Circuit conceded that Section 1964(a) on its face supported a "plausible reading" that would find a basis for granting injunctive relief, the Court examined ambivalent instances in RICO's legislative history, the test of the Clayton Act, and subsequent sessions of Congress and concluded that Congress may

not have intended to provide equitable relief to private parties. The Court's approach was improper and mistaken. Legislative history should not be resolved to create an ambiguity. Nor should other statutes be similarly used. Such legislative history may only be used to vary the plain text of a statute when it is itself unequivocal.

In sharp contrast, the Second Circuit in Aetna Casualty Surety Co. v. Liebowitz, 730 F.2d (2d Cir. 1984), left intact the district court's preliminary injunction which was based on RICO [3/] in deciding whether private parties, who obtain preliminary injunctions and then settle the case, may recover attorneys fees. While the Court decided that they

3. Aetna Casualty and Surety Co. v. Liebowitz, 570 F.Supp. 908 (E.D.N.Y. 1983).

may not, it covertly observed that:

> ...once the Supreme Court handed down Bell v. Hood, 327 U.S. 678 (1946), which postdated the enactment of the Clayton Act, a specific statutory provision authorizing preliminary injunctive relief to maintain the status quo was no longer necessary, for in Bell v. Hood, the Court stated that 'where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done.' 327 U.S. at 684.

730 F.2d at 909.

Similarly, in Bennett v. Berc, 685 F.2d 1053, 1064-65 (8th Cir. 1982) aff'd on rehearing, 710 F.2d 1361 (8th Cir. en banc), cert denied, 464 U.S. 1008(1983), the Eighth Circuit considered but did not decide, whether more than treble damages might properly be awarded under RICO. But without "endorsing or rejecting" the opinions expressed by legal writers, the Court determined that

such scholarship had concluded that equitable relief was available. On rehearing, while the issue remained unresolved, in a concurring opinion, Judge McMillian offered his judgment that equity-type relief was available. His analysis--and not that of the Ninth Circuit--is correct:

> [S]ection 1964(a) is a general grant of equitable power. It is not limited on its face or in its legislative history. Section 1964(b) grants the government authority to seek relief, an authority that it was necessary to set out lest old learning be used to circumscribe the new governmental power to seek equitable relief. Nothing in section 1964(b) speaks in negative terms about an authorization for private parties to seek similar relief. Indeed, the governmental suits are to be brought in behalf of private parties. No satisfactory explanation can be offered as to why Congress would have precluded victims from seeking help themselves. Section 1964(c) moreover, says "sue and" and not "sue to." The contrary argument would have to suggest that by adding the right to secure treble damage

> relief to the general right to sue Congress somehow manifested an intention to subtract the right to obtain other forms of relief. How addition might be converted with subtraction in a remedial statute that must be liberally construed strains even the legal imagination. Section 1964 ought to be read as authorizing both governmental and private suits to obtain equitable relief. To the degree that any ambiguity might be thought to exist in the choice of language, the liberal construction clause and the remedial purpose of the statute come down on the side of finding private suits to be authorized and that full relief can be granted. No satisfactory rationale can be offered, in short, to explain why a court ought to feel itself circumscribed in doing full justice for a victim under RICO.

710 F.2d 1365-66. 4/

In Dan River, Inc. v. Icahn, 701 F.2d at 278, (1983) the Fourth Circuit considered the issue of equity-type

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4. Quoting, 58 Notre Dame L.Rev. at 331-32 (footnote omitted); See, Blakey & Gettings, Racketeer Influenced and Corrupt Organizations (RICO); Basic Concepts-Criminal and Civil Remedies, 53 Temple L.Q. 1009, 1014, 1038 nn. 132-33 (1980).

relief in the context of its denial of an injunction in a corporate takeover battle. The Court expressed "substantial doubt" whether RICO included injunctive relief for private parties, although it did not "undertake to resolve the question." Id. It's doubt, however, was not based on an examination of the text of the statute, it's liberal construction clause, or it's legislative history, but on the Supreme Court's post RICO restrictive view on implying claims for relief, as expressed in Cort v. Ashe, 422 U.S. 66 (1975). The Ninth Circuit also applied a Cort v. Ash analysis concluding that a private right to equitable relief could not be implied.[5/]

The disharmony at the Circuit level

5. Neither Court, however, considered the application of Merrill Lynch, Pierce, Fenner & Smith v. Curran, 456 [Footnote Cont'd]

is also present among the district courts. The only three published decisions to expressly hold that injunctive relief is not available are all from the Northern District of Illinois. See, Miller v. Affiliated Financial Corp., 600 F.Supp. 987, 994 (N.D. Ill. 1984); DeMent v. Abbott Capital Corp., 589 F.Supp. 1378, 1382-83 (N.D. Ill. 1984) and Kaushal v. State Bank of India, 556 F.Supp. 576, 581-84 (N.D. Ill. 1983). See also, Ashland Oil, Inc. v. Gleave, 540 F.Supp. 81-86 (W.D.N.Y. 1982)

[Footnote 5 Cont'd]
U.S. 353 (1982) -- and its holding that the law in existence at the time of enactment of the legislation is controlling -- in considering whether a remedy should be held to be implicit in the statute. As such, both Courts missed the significance of this Court's most recent teaching in this area. See also, Herman and MacLean v. Huddelston, 459 U.S. 375 (1983); Daily Income Ford, Inc. v. Fox, 464 U.S. 523 (1984).

(statutory attachment not available to a private civil RICO plaintiff). Each of these cases, however, was decided prior to this Court's decision in Sedima.

In Chambers Development Co. v. Browning - Ferris Industries, 590 F.Supp. 1528, 1541 (W.D. Pa. 1984), however, the district court acknowledged that "courts are split as to whether or not a district court's equitable powers extend to private plaintiffs in RICO cases" and declined to strike a prayer for equitable relief. Id. at 1540. The Court expressed its belief that "the drafters of RICO intended for private claimants, as well as the Government, to benefit from the broader forms of relief in furtherance of the purposes of the Act..." Id. at 1541, and rejected the contrary opinions in Dan River, supra

and Kaushal, supra. Instead, the district court adopted the holdings of two district courts, which exercised inherent equitable powers to grant injunctive relief to private claimants in RICO cases. Marshall Field & Company v. Icahn, 537 F.Supp. 413 (S.D.N.Y. 1982); Vietnamese Fisherman's Association v. Knights of Ku Klux Klan, 518 F. Supp. 993 (S.D. Tex. 1981).

It is plain that considerable confusion and diversity of opinion exists in the lower courts as to whether they may provide equity relief to enforce RICO in private civil actions. As such, this Court should grant certiorari and resolve this important question.

III.

THE NINTH CIRCUIT'S DECISION CONFLICTS WITH THE RATIONALE OF THIS COURT'S RECENT HOLDING AND UNDERCUTS CONGRESSIONAL OBJECTIVES IN RICO CASE LITIGATION

To determine the scope of RICO, this Court has admonished the reader to look first to its language." United States v. Turkette, 452 U.S. 576 (1981); Russello v. United States, 464 U.S. 16, 20 (1983). A dispassionate reading of the language of Sec. 1964--as well as its liberal interpretation clause--in addition to this Supreme Court's recent mandate for a broad reading of RICO leads ineluctably to the conclusion that Section 1964 included equitable relief for private parties. Section 1964(a) is a general grant of equitable power limited

only by the district court's discretion. This Section ought to be read literally and applied in the unrestricted fashion its plain language demands.

The Ninth Circuit conceded that Sec. 1964(a) on its face appeared to provide a "plausible reading" that would support a basis for granting relief. Such a conclusion mandates that the analysis stop there. Basic and long established statutory construction rules require that such a plain reading of the statute be followed. In other words, the "language of [a] statute" is not only the "starting point" in ascertaining legislative intent, Lewis v. United States, 445 U.S. 55, 60 (1980), if unambiguous, such language must ordinarily be regarded as conclusive. United States v. Turkette, 452 U.S. at 580. Where

there is no ambiguity, there is no room for construction, and no reason to resort to legislative history, United States v. Wiltburger, 18 U.S. (5 Wheat) 76 (1820); Diamond v. Chakrabarty, 447 U.S. 303, 315 (1980), or to turn to other statutes. Hamilton v. Rathbone, 175 U.S. 412, 421 (1849). The Ninth Circuit ignored these tenets of statutory construction. It ignored a plausible reading of the statute, despite the fact that no ambiguity is present.

Assuming that prior to its turning to RICO's legislative history, the Ninth Circuit could legimately determine that the statute was ambiguous, its analysis remains critically flawed. Like Judge Shadur's concession in Kaushal that RICO may be ambiguous on the point of equitable relief, such a finding must be

resolved, by virtue of RICO's express language that requires its "liberal" construction "to effectuate its remedial purposes." 84 Stat. 947 (1970). Resort to the legislative history to resolve the ambiguity is improper. In other words, the liberal construction clause is a rule of statutory construction based on the text of the statute itself that provides a basis for ascertaining legislative intent. As such, it ought to govern. See, Brown v. Barry, 3 U.S. (2 Dall.) at 367 ("intention of the legislature when discovered, must prevail [over] any rule of construction"). In RICO, Congress drafted a "carefully crafted statute." Iannelli v. United States, 420 U.S. 770, 789 (1975). Accordingly, if RICO's language is plain, it ought to control; if the language is ambiguous, that

construction which would "effectuate its remedial purposes" "by providing enhanced sanctions and new remedies" ought to be adopted. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 923, 927 (1970).

Only by relying upon an unexpressed negative implication can the Ninth Circuit read the language of the Act to hold that the inclusion of one specific remedy for private litigants (treble damages in Sec. 1964(c)) might mean that no other remedy was intended for private plaintiffs. Yet this Court has decidedly rejected the application of the maxim of statutory construction, expressio unius est exclusio alterius, where it would undermine the statute's dominating remedial purpose. Herman v. Huddleston, 103 S.Ct. 683 (1983).

Moreover, the Ninth Circuit has its reasoning upside down. Express text must be found to deny, not to authorize equitable relief. Under a pure statutory construction analysis, therefore, it is presumed that all necessary remedies exist for the private plaintiff. This presumption can be rebutted only by an express contrary legislative intent. Under the negative implication analysis, on the other hand, the presumption is that no private equitable remedy exists. Thus, the presumption can only be rebutted by affirmative legislative intent that such a remedy should be found. The proper approach is, in short, that the remedy is present unless it is clearly withheld, either as a matter of a fair construction of the text or a clear import of the legislative history. The

burden lies on he who would restrict the availability of the power of a court to do justice to show that Congress had expressly withheld it. The presumption, which causes close cases to be resolved in favor of the power, not against it, is that the power is present. 6/ A "negative implication" derived from the grant of treble damages and fees is neither a clear nor an express

6. See generally, Califano v. Yamasaki, 442 U.S. 682, 705 (1979) ("Absent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction.") (citing Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946) ("Unless otherwise provided by statute, all the inherent equitable powers...are available...") and Scripps-Howard Radio, Inc. v. F.C.C., 316 U.S. 4,11 (1942) ("Congress would not, without clearly expressing such a purpose, deprive...[a court] of its customary power....*** [D]enial of such power is not to be inferred...[from silence] *** Where Congress wish[es] to deprive the courts of...historic power, [Footnote Cont'd]

withholding of equitable relief by Congress.

In its search of RICO's legislative history for evidence that Congress did not intend to provide the private injunctive relief, the Ninth Circuit found two "episodes" particularly

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[Footnote 6 Cont'd]
it [knows] how to use apt words."); Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 239 (1969) ("existence of all necessary and appropriate remedies."); Jones v. Mayer Co., 392 U.S. 409, 414 n. 13 (1968) ("The fact that 42 U.S.C. Sec. 1982 is couched in declaratory terms and provides no explicit method of enforcement does not, of course, prevent a federal court from fashioning an effective equitable remedy"); Porter v. Warner Holding Co., 318 U.S. 395, 398 (1946) ("Unless a statute words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied."); Texas & N.O.R. Co. v. Brotherhood of R. & S.S. Clerks, 281 U.S. 548, 570 (1930) ("The right is created and the remedy exists.") (citing Marbury v. Madison, 7 U.S. (1 Cranch 137, 162-63 (1803)).

convincing:

> First, the House rejected an amendment, described as an additional civil remedy which would expressly permit private parties to sue for injunctive relief under section 1964(a). Second, in the very next year after RICO's enactment, Congress refused to enact a bill to amend section 1964 and give private plaintiffs injunctive relief.

796 F.2d 1085.

The amendment referred to by the Court was introduced by Representative Steiger, however the Court misread the House floor interchange between Congressman Poff and Steiger. 796 F.2d at 1085-86. Congressman Steiger's amendment included, inter alia, a separate section for private equity relief, different language dealing with amount in controversy, intervention by the Attorney General, non-mutual estoppel, and a statute of limitations.

The amendment was withdrawn, not defeated. It was not, moreover, limited to the question of equitable relief. Congressman Steiger noted, too, at the time under "the bill as it now stands [innocent victims]...may have [the] option to obtain proper redress." 116 Cong. Rec. 35, 349 (1970) (emphasis added). Congressman Poff, too, spoke of the treble damage claims as "in addition" to the power of the court to do equity. 116 Cong. rec. 35, 395 (1970). As such, the ruling of the Ninth Circuit is inconsistent with the plain language of the RICO statute, principles of statutory construction on the legislative history of the Act, and it's underlying policy considerations; moreover, it conflicts with rulings in other circuits, the Act's liberal construction clause, and this

Court's Mandate in Sedima.

The second legislative episode cited by the court is the failure of the House to pass S.16 the following year which contained provisions expressly authorizing private injunctive relief. S.16, however, included numerous other provisions and the Ninth Circuit points to no particular evidence that would indicate that the failure of the House to pass S.16 was in any way related to the injunctive relief provision.

The Court's conclusion, however, highlights rather than resolves the perceived ambiguity in the legislative history. As the Supreme Court has observed, contradictory or ambiguous legislative material "should not be permitted to control the customary meaning of words," NLRB v. Plasterer's

Local, 404 U.S. 116, 129 n.24 (1971). In any event, as the Supreme Court restated in a RICO criminal case, Russello v. United States, 104 S. Ct. 296 (1983), "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." (Quoting Jefferson County Pharmaceutical Ass'n v. Abbott Laboratories, 103 S.Ct. 1011, 1020 n.27 (1983).)

Assuming arguendo that the legislative history is ambiguous, the court, as a matter of statutory construction, ought not have used it to resolve supposed ambiguity in the language of the text. It should have relied on the compelling policy considerations and RICO's remedial purposes to find a private right to injunctive relief. As it stands, the

Ninth Circuit's decision gives rise to the profoundly disturbing, but inevitable situation where there will be a right without an adequate remedy. Accordingly, based on the conflict regarding the interpretation of RICO and the overall importance of this national issue, Petitioners respectfully urge this Court to grant Certiorari.

IV.

PETITIONERS' TRADE SECRET CLAIM AND GOVERNING CONSTITUTIONAL PROVISIONS AND STATUTES

The Ninth Circuit also ruled that religious materials, merely because they are owned by non-profit religious organizations, are not entitled to the protection afforded by the California trade secrets statute. By so holding, the Ninth Circuit has effectively denied

Petitioners' Fifth and Fourteenth Amendment rights to due process and equal protection of the law.

Petitioners believe that through a process called "auditing", unwanted barriers that inhibit, stop, or blunt a person's natural abilities are removed. Petitioners believe that auditing increases a person's abilities so that he becomes more able and his survival, happiness, and intelligence are increased. The auditing process involves the application of the "religious technology" and "advanced religious technology" of the Petitioners, the higher levels of which contain certain confidential information which is carefully protected from disclosure and is protected as a trade secret. It is these higher level materials which were

stolen and were in the possession of the Defendants.

As noted by the Ninth Circuit, before 1985 California trade secret law was based on the Restatement of Torts 737, comment (b) (1939).

The leading California case prior to the present legislation adopted verbatim the Restatement's definition of trade secret:

> It is now settled that a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

Sinclair v. Aquarius Electronics, Inc., 42 Cal. App. 3d 216, 221, 116 Cal. Rptr. 654, 658 (1974) (emphasis omitted); See also, Chicago Lock v. Fanberg, 676 F.2d 400, 404 (9th Cir. 1981). The Restatement (Second) of

Torts omitted Section 757 and any reference to trade secrets. In response, a Uniform Trade Secrets Act was drafted. California adopted this Uniform Act, with minor changes, in 1985. See, Appendix C, 86.

The District Court concluded that the Petitioners' confidential materials met the definition of a trade secret. The Court stated:

> Now I think that the Court can definitely say that under the definitions that the Court is required to follow with respect to trade secrets, if you look at Clark v. Bunker, which is one of the cases that we were looking at earlier, you will find that it meets that definition of trade secrets. It meets the definition of a trade secret under 10 cases in the Ninth Circuit.

The District Court, after carefully examining all the evidence, found that Plaintiffs' confidential materials had been stolen and that Defendants were in

possession of and made use of such materials for their own pecuniary gain. The preliminary injunction prohibited Defendants from possessing, using, and disseminating the stolen confidential materials.

V.

THE CALIFORNIA TRADE SECRETS ACT AS INTERPRETED BY THE NINTH CIRCUIT VIOLATES PETITIONERS' FIFTH AND FOURTEENTH AMENDMENT DUE PROCESS AND EQUAL PROTECTION RIGHTS.

As previously noted, this Court has held that "neutral principles of law" are to be applied to resolve Church property disputes. See, Jones v. Wolfe, 443 U.S. 595 (1979). This Court has also recognized that trade secrets constitute property protected by the Fifth and Fourteenth Amendments.

Ruckelshaus v. Monsanto Co., 104 S.Ct. 2862 (1984); See also, St. Michaels Convalescent Hospital v. California, 643 F.2d 1396 (9th Cir. 1981). By interpreting the California Trade Secrets Act to mandate that all other entities except religious organizations are entitled to the protection afforded by the Act, the Ninth Circuit has now denied Petitioners the right to hold and protect property in the nature of trade secrets. Petitioners submit that such a denial of access to the protection afforded by purely secular laws, merely because Petitioners are religious non-profit organizations, constitutes a violation of Petitioners' Fifth and Fourteenth Amendment rights to due process and equal protection.

The equal protection clause requires a state to treat alike all persons who

are similarly situated, in the absence of sufficient justification for differences in treatment. The equal protection clause is directed to every form of state action--legislative, executive or judicial. Ex Parte Virginia, 100 U.S. 339, 347, 25 L.Ed. 676 (1880).

The unequal application of a state law, fair on its face (e.g. the California Trade Secrets Act) has long been viewed as a denial of equal protection. In Yick Wo v. Hopkins, 118 U.S. 356, 373-374, 6 S.Ct. 1064, 1073(1886), the Court stated:

> Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution...

In the instant case, the Ninth Circuit has made a classification of the persons entitled to the benefits of the California Trade Secrets Act. The Ninth Circuit has held that Petitioners, because they are religious non-profit organizations, cannot maintain an economic advantage over others and thus cannot claim the protection afforded by the trade secrets statute. However, the Act is neutral on its face as to the persons and/or entities entitled to its protection. Indeed, 3426.1 (c) of the statute defines "persons" as a "natural person... or any other legal or commercial entity" (See appendix C, 86). Petitioners, as legal entities, clearly lie within the purview of the statute's protection. The Ninth Circuit's arbitrary classification, is subject to "strict scrutiny" and cannot be upheld

unless shown to serve a "compelling governmental interest." See, Pyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382, 2394-96, 72 L.Ed. 786 (1982).

Petitioners will be prohibited from enjoining the continuing misappropriation and misuse of materials obtained by theft merely because they are religious organizations. This arbitrary distinction serves absolutely no governmental interest and simply defies logic.

The Ninth Circuit has lost sight of this distinction and ruled that because Petitioners are religious entities they cannot maintain an economic advantage and thus are not entitled to protection that is enjoyed by all other legal or commercial entities.

Notwithstanding the fact that Scientology is a religion and its

churches, including the Petitioners herein, are engaged in religious activities, there remains the fact that Scientology, like any other religion, must exist in an economic environment in order to survive. Churches exist financially by receiving donations and by then managing those donations in such a way as to increase the financial viability and ensure its economic survival. All the principles of economics normally associated with the business community apply.

This Court stated in Murdock v. Pennsylvania, 63 S.Ct. 870(1943):

> "But the mere fact that the religious literature is "sold"... rather than "donated" does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project.

Id. at 874.

There can be no question that non-profit organizations can own property and derive economic advantages. The Fourth Circuit's holding in the case of Purcell v. Summers, 145 F.2d 979 (4th Cir. 1944). is most illustrative on this point and has been cited with approval by the Ninth Circuit Court of Appeals in United States Jaycees v. San Francisco's Junior Chamber of Commerce, 513 F.2d 1226 (9th Cir. 1975). In Purcell, the Fourth Circuit held that the law of unfair competition applies with equal force to both religious organizations and for-profit businesses. That Court stated:

> "We have no doubt that these principles of [unfair competition] ordinarily applied in the case of business and trading corporations are equally applicable in the cases of churches and other religious and charitable organizations; for, while such organizations exist for the

> worship of Almighty God and for the purpose of benefiting mankind and not for the purposes of profit, they are nevertheless dependent upon the contributions of their members for means to carry on their work, and anything which tends to divert membership or gifts of members from them injures them with respect to their financial condition is the same way that a business corporation is injured by diversion of trade or custom...We are aware that churches are established for the promulgation of faith under the regulations of definite religious organizations, but we are also aware that such organizations, through some administrative channels, own property, real and personal, and require funds to carry on their purposes. These funds come from contributions, gifts, donations, and bequests. No large church organization could live by faith alone and if its income were stopped or substantially reduced, its scope for spreading its religion, as enunciated by its doctrines, would be seriously hampered.

Id. at 985 (emphasis added).

Thus, Purcell recognizes that the existence of any religious organization

is, of necessity, dependent upon a financial basis just like a for-profit business. Petitioners, like other religious non-profit organizations, depend on contributions, gifts, donations and bequests to carry out their religious purposes. Specifically the religious services delivered by the Petitioners, for which a fixed donation is made are those services delivered utilizing the confidential materials at issue in this case. Indeed, these fixed donations are petitioners' main source of income. These funds are then managed by Petitioners' in such a manner so that they are financially viable and expanding.

The Ninth Circuit concluded that Purcell does not apply in the instant case because this case involves trade

secrets, while Purcell involved trade names. However, trade name as well as trade secret protection has long been recognized, even by the Ninth Circuit, as just one of the many aspects encompassed by the concept of unfair competition. In Chicago Lock Co. v. Fanberg, 676 F.2d 400 (9th Cir. 1981), the Ninth Circuit stated:

> Commission of the common law tort [of trade secret misappropriation] is enjoinable under the purview of unfair competition.

Id. at 404. 7/

The "trade" in trademark or trade name is the same "trade" as found in trade secret. The rationale for trademark, trade name and trade secret

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7 See also, Pachmayr Gun Works, Inc. v. Olin Matheson Chem. Corp., 502 F.2d 802 (9th Cir. 1974); Engelhard Industries, Inc. v. Research Instrumental Corp., 324 F.2d 347 (9th Cir.1963); Architectural Models, Inc. [Footnote Cont'd]

protection, all of which are protected under the laws of unfair competition, is exactly the same. This rationale is reflected by the Court's statement in Purcell that:

> In all [cases of unfair competition] there is involved the element of fraudulent attempt of someone to 'reap where he has not sown' and to appropriate to himself 'the harvest of those who have sown.' 145 F.2d at 987.

The Ninth Circuit's decision is in direct conflict with this rationale.

To allow the decision to stand will mean that anyone can steal confidential materials from any religious organization without civil restraint. This simply

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[Footnote 7 Cont'd]
v. Neklason, 264 F.Supp. 312 (N.D. Cal. 1967); Grove Press, Inc. v. Collectors Publication, Inc., 264 F.Supp. 603 (C.D. Cal. 1967); Barquis v. Merchants Collection Association, 7 Cal. 2d 94, 95, 496 P.2d 625,627 (1957); 2 Callman Unfair Competition, Trademarks, and Monopolies, Section 14.01 N. 6.

does not conform with the laws of unfair competition and is a clear denial of Petitioners due process and equal protection rights. Accordingly, Petitioners seek a Writ of Certiorari from this Court to review the Ninth Circuit's first impression ruling that Petitioners, merely because they are religious organizations, cannot maintain an economic advantage and are thus not entitled to the protection of California Trade Secrets Act and the laws of unfair competition. Such an arbitrary distinction based on the suspect classification of religion violates Petitioners' rights to due process and equal protection of the law.

VI

THE CALIFORNIA TRADE SECRET STATUTE AS INTERPRETED BY THE NINTH CIRCUIT VIOLATES PETITIONERS' FIRST AMENDMENT RIGHTS.

The Ninth Circuit has held that a religion, cannot maintain an economic advantage and "[i]ndeed, to do so would raise grave doubts about its claim as a religion and a not-for-profit corporation." As shown above, such a distinction has no basis in law, is in direct conflict with this Court's holding in Murdock v. Pennsylvania, supra, and denies Petitioners due process and the equal protection of the law.

By so ruling as a matter of law that the protection afforded by the California Trade Secret Act does not extend to materials owned by religious organiza-

tions, the Ninth Circuit has effectively destroyed Petitioners' First Amendment right to freely practice their religion.

A law which disqualifies one from an otherwise available right, simply because of ones religious status, violates the First amendment unless there is an overriding governmental interest. McDaniel v. Paty, 98 S.Ct. 1322 (1978); Bob Jones University v. United States, 103 S.Ct. 2017 (1983). Moreover, this Court has long recognized that a statute which is neutral in its face can be applied in a way that is violative of First Amendment guarantees. Wisconsin v. Yoder, 92 S.Ct. 1526 (1972); Sherbert v. Vernon, 83 S.Ct 1790 (1963).

In the instant case, Petitioners believe that the confidential materials at issue have to be delivered to their

parishioners in a very exact prescribed manner as set out in the Scientology scriptures. These scriptures mandate that only those individuals who have completed the appropriate prerequisite services may be exposed to the confidential materials at issue.

The Ninth Circuit's decision, if allowed to stand, will inevitably result in the public dissemination and uncontrolled supervision of the confidential materials which violates Petitioners' religious beliefs. The Court's decision directly effects the manner in which Petitioners' religious beliefs are disseminated. See, Negre v. Larsen 91 S.Ct. 828(1971).[8/]

Therefore the Ninth Circuit's

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8 McDaniel v. Paty, 98 S.Ct. 1322(1978); Fowler v. Rhode Island, 73 S.Ct. 526 (1953); Follett v. Town of McCormick, 64 S.Ct. 717 (1944).

decision constitutes a violation of Petitioners first amendment rights to the free exercise of their religion.

Additionally, such an interpretation of the Trade Secret Act violates First Amendment establishment clause protections set forth in the three prong test of Lemon v. Kurtzman, 403 U.S. 602 (1971):

> First, the statute must have a secular legislative purpose; second its principal or primary effect must be one that neither advances nor inhibits religion . . . ; finally, the statue must not foster an excessive government entanglement with religion.

Id. at 612 (emphasis added); See also, Wisconsin v. Yoder, 406 U.S. 205 (1972); Sherbert v. Verner, 374 U.S. 398 (1963).

The California Trade Secrets Act as interpreted by the Ninth Circuit clearly

fails the second portion of the Lemon test in that it inhibits Petitioners' free exercise and establishment of their religion.

CONCLUSION

The petition for certiorari should be granted for the reasons stated above.

DATED: January 5, 1987

Respectfully submitted,

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86-1123

Supreme Court, U.S.
FILED
JAN 5 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

RELIGIOUS TECHNOLOGY CENTER, a California corporation, and CHURCH OF SCIENTOLOGY INTERNATIONAL, INC., a California corporation,

Petitioners,

vs.

LARRY WOLLERSHEIM, an individual; DEDE REISDORF, an individual; RICHARD OFSHE, an individual; MARGARET SINGER, an individual; HARVEY HABER, an individual; CHARLES B. O'REILLY, an individual, LETA SCHLOSSER, an individual; GREENE, O'REILLY, BROILLET, PAUL, SIMON, McMILLAN, WHEELER and ROSENBERG, a California corporation; and DOES 1 through 100, inclusive,

Defendants,

JON ZEGEL, an individual; DAVID MAYO, an individual; CHURCH OF THE NEW CIVILIZATION (dba ADVANCED ABILITY CENTER), a California corporation,

Respondents.

APPENDICES TO
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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APPENDICES

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

RELIGIOUS TECHNOLOGY CENTER; a California corporation, et al., Plaintiffs,	No: 85-7197 MRP (Bx)
v.	PRELIMINARY INJUNCTION AND FURTHER FINDINGS OF THE COURT
LARRY WOLLERSHEIM, an individual; et al.	
Defendants.	

The Court having considered the Complaint, supporting declarations, exhibits, evidence and points and authorities submitted in support of Plaintiffs Request for a Preliminary Injunction and good cause being shown that this is a proper case for issuance of a Preliminary Injunction, the Court finds that Plaintiff is likely to succeed

on the merits or at least that sufficiently serious questions going to the merits of the case have been established to make them a fair ground for litigation and that unless the Preliminary Injunction issues immediately, Plaintiffs will suffer irreparable harm by way of loss of trade secrets in connection with its confidential religious documents.

THEREFORE, IT IS HEREBY ORDERED:

1. That Defendants Mayo, Zegel, Haber, Reisdorf and the Church of the New Civilization, dba Advance Ability Center, (AAC) their agents, servants, employees, attorneys and those persons in active concert or participation with them or who are acting at their request or insistence who receive actual notice by personal service or otherwise, and each of them, pending the final hearing and

determination of this action are enjoined, pursuant to Rule 65 of the FRCP:

(a) from using, distributing, exhibiting or in any manner publicly revealing any and all originals, copies, retypings, recastings, variations of or altered versions of all confidential religious scriptures known as: 1) OT V, 2) OT VI, 3) OT VII, 4) NOTS, 5) SOLO NOTS 6) AA V, 7) AA VI, 8) AA VII, or the contents thereof;

[(b) is crossed out by Court]

(c) and further required to deliver up all confidential religious scriptures referred to in paragraph 1(a) together with all computerized memorializations of the same to the Court by Nov 26, 1985, at 12:00 pm.;

(d) and are further prohibited from distributing all religious scriptures

referred to in 1 (a), inside or outside of the United States; and

(e) and are further enjoined from using all confidential religious scriptures and variations thereof referenced in paragraph 1 (a) above.

2. Any documents referred to in paragraph 1(a) above which may be filed with the court or served on parties in this action shall be filed in a sealed envelope or container, marked on the outside with the title of the action and identification of each document within and a statement substantially in the following form:

"CONFIDENTIAL - SUBJECT TO COURT ORDER

This envelope (or container) containing the above identified papers filed by (name of party), is not to be opened nor the contents thereof displayed or revealed to

non-parties to this action except by COURT ORDER or by agreement of the parties."

3. ORDERED that Plaintiffs shall post a bond in a form approved by the court in the sum of (*) $100,000 as security for the payment of such costs and damages as may be incurred or suffered by any party who is subsequently found to be wrongfully enjoined or restrained hereby;

(*) Bond to be posted by 12:00 noon 11/27/85, MRP

4. That service of this Order, may be made by Plaintiffs' attorneys or their duly qualified agents or employees on the AAC Defendants on or before 3:00 clock p.m. on November 23, 1985 and that such service be deemed sufficient service.

Mariana R. Pfaelzer
Judge United States District Court

Further Findings of the Court (in addition to those announced in open court on November 22, 1985):

1. The Court did not find the testimony of David Mayo credible on the issue of how he and the Advanced Ability Center came to have in their possession the documents in question in this lawsuit (i.e. those produced by the Advanced Ability Center ("the AAC") for inspection by the Court). The Court does not believe that anyone, even Mr. Mayo, could have reproduced from memory materials substantially identical to those stolen in Denmark from the Church. The documents are too voluminous, too detailed and too nearly identical in substance and wording to have been created by Mr. Mayo without reference to the stolen documents.

2. On the issue of irreparable harm, the Court is not required to

finally decide whether the documents in question here are sacred scriptures which were stolen and passed on to the defendants, or trade secrets. However, it is very clear that Mr. Mayo and the AAC are advertising to the public that the AAC has the same services, procedures and steps available to the public as does the Church and that the cost of these services, procedures and steps is substantially less than that charged by the Church. After carefully examining the documents in question here, the Court finds the contents thereof to be more akin to methodology than to doctrine but reserves judgment on that matter until the time of trial. However, there seems to be agreement between the parties that the adherents of Scientology are required to receive the teachings of Scientology in a certain set progression and that great care must be taken that no errors

be made in moving the adherent from one stage to the next. The Church has urged that irreparable harm will result from any inadequately supervised disclosure and use of the materials at issue here. Further, from the evidence presented to the Court, it appears that all adherents of Scientology are in substantial agreement on this point. As stated, the Court makes no finding on the value or the efficacy of the teachings or methods of Scientology. Rather, since this is, in the main, a dispute between the Scientologists themselves, the Court must accept, at least preliminarily, that proper supervision must attend the disclosure and use of the materials at issue here. The Court views this as a stolen document case, and the theft appears to have been as much for economic as for doctrinal reasons.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RELIGIOUS TECHNOLOGY CENTER and CHURCH OF SCIENTOLOGY INTERNATIONAL, INC.,	No. CV 85-711 MRP
	CV 75-7197 MRP
Plaintiffs-Appellees,	
v.	RESPONSE TO ORDER DIRECTED TO DISTRICT COURT
LARRY WOLLERSHEIM, et al.,	
and	
CHURCH OF THE NEW CIVILIZATION, HARVEY HABER, DEDE REISDORF, JON ZEGEL and DAVID MAYO,	
Defendants-Appellants.	

This case involves the possession and use of allegedly stolen documents

which were maintained in confidence prior to their theft. The contents of these documents are viewed by all the parties as sacred scriptures. Whether this is a proper legal characterization of the contents of the documents or not, the contents quite clearly also appear to be akin to trade secrets. There is no doubt that the contents have very substantial economic value and were employed to produce income for the parties. The evidence presented at the hearing permits no doubt of this value.

The Court did not find it necessary to reach any final decision as to the proper legal characterization of the documents. Under either legal characterization, they appear to have been stolen and improperly used thereafter. For these reasons, the grant of injunctive relief was made on both the plaintiffs' 18 U.S.C. §.1961-1968

("Rico") claim and on plaintiffs' state law trade secrets claim.

DATED: July 16, 1986

Mariana R. Pfaelzer
United States District Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RELIGIOUS TECHNOLOGY CENTER and CHURCH OF SCIENTOLOGY INTERNATIONAL, INC.,	No: 85-6547 D.C. No. CV 85-7197-MRP
Plaintiffs-Appellees,	ORDER
vs.	
LARRY WOLLERSHEIM, et al.,	
and	
CHURCH OF THE NEW CIVILIZATION, HARVEY HABER, DEDE REISDORF, JON ZEGEL and DAVID MAYO	
Defendants-Appellants.	

Before: PREGERSON, POOLE, and THOMPSON, Circuit Judges.

The basis of the district court's grant of injunctive relief in this case is unclear from the record. We therefore remand the matter to the district court for the limited purpose of advising us

whether its order of November 23, 1985 was issued pursuant to:

(1) the plaintiff's 18 U.S.C. §1964(c) ("civil RICO") claim; or

(2) plaintiff's pendent state trade secrets law claim; or

(3) both (1) and (2).

We would appreciate it if the district court would respond to this request before July 21, 1986.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RELIGIOUS TECHNOLOGY CENTER and CHURCH OF SCIENTOLOGY INTERNATIONAL, INC.,	No. 85-6547 D.C. No. CV 85-7197-MRP
Plaintiffs-Appellees,	OPINION
vs.	
LARRY WOLLERSHEIM, et al.,	
Defendants,	
and	
CHURCH OF THE NEW CIVILIZATION, HARVEY HABER, DEDE REISDORF, JON ZEGEL and DAVID MAYO,	
Defendants-Appellants.	

An Appeal from the United States District Court for the Central District of California
Hon. Mariana R. Pfaelzer, Judge Presiding
Argued and Submitted: March 5, 1986
Pasadena, California

Before: PREGERSON, POOLE, and THOMPSON, Circuit Judges. PREGERSON, Circuit Judge.

The Church of the New Civilization ("new church") is a splinter from the Church of Scientology ("Church"). The Church alleged that certain scriptural materials offered by the new church were copies of materials stolen from the Church. Recognizing federal jurisdiction under the Racketeer Influenced and Corrupt Organization Act ("RICO"), the district court held that the Church's materials constituted a trade secret and granted the Church a preliminary injunction ordering the new church to desist from using or disseminating the disputed materials.

We reverse the district court's order granting a preliminary injunction. Pursuant to this court's order, the district court advised that at issued its

preliminary injunction "on both the plaintiffs' 18 U.S.C. §§1861-1968 ("RICO") claim and on plaintiffs' state law trade secrets claim." We resolve the appeal, therefore, under both these theories. We hold that injunctive relief is not available to a private plaintiff in a civil RICO action. Additionally, we hold that the California courts would conclude that sacred scriptures do not meet the definition of a trade secret under California law.

FACTS

The Church of Scientology teaches that a person's behavior and well-being are improved by removing "engrams" from the unconscious mind. Engrams are impressions recorded by the unconscious mind in times of trauma in this life or in previous lives. Engrams return in moments of similar stress to the detriment of the person's behavior.

Removing engrams from the unconscious permits the person's analytical mind to function unhindered.

Engrams are located and purged through "auditing." Auditing uses the "technology" and "advanced technology" of the Church. An "auditor" directs a set of structured questions and drills ("rundowns") at the Church adherent. The adherent's responses are measured on a "Hubbard E-meter" which reflects changes in "skin voltage." The auditor's aim is to detect the "buttons" which indicate a conscious or subconscious response to the rundown and enable the adherent to identify his or her engrams. The adherent must proceed through a series of increasingly sophisticated technologies of closely structured questions and answers to reach "a higher spiritual existence."

The Church asserts that the

unsupervised, premature exposure of an adherent to these materials will produce a spiritually harmful effect.[1] The Church keeps the higher level materials in secure places, and makes the materials available only to adherents who agree in writing to maintain their confidentiality. The Church stated to the district court that it does "not safeguard these materials from any commercial consideration."

Defendant David Mayo was apparently at one time a close associate of Church founder L. Ron Hubbard, and assisted in the preparation of the Church's higher level materials.[2] Following an acrimonious dispute between Mayo and

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1 The new church, which follows essentially identical religious precepts and practices to those of the Church, does not dispute this assertion.

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2 The new church asserts that Mayo authored the disputed higher level materials. The Church vigorously [Footnote Cont'd]

other senior Church officers, Mayo left the Church and, in July 1983, established the Church of the New Civilization. The new church embraces beliefs and provides counseling and training to its adherents

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[Footnote 2 Cont'd]
disputes this, maintaining that Hubbard created all Church materials.

Hubbard apparently assigned the materials, together with other materials forming the technology and advanced technology of "Scientology" and "Dianetics," to the Religious Technology Center. See Church of Scientology International v. The Elmira Mission of the Church of Scientology, No. 85-7693, slip op. at 14 (2d Cir. June 23, 1986) (Hubbard validly assigned his rights in all Scientology materials to Religious Technology Center). Hubbard apparently intended the Center to be the "trustee of the scriptures" of Scientology. The Center makes available the higher level materials of the advanced technology to Church offices around the world in the form of "packs." Apparently the advanced technology packs at issue here are only available at six Church offices in the world.

Many lower level materials are copyrighted, and these copyrights apparently passed to the Religious Technology Center in Hubbard's will. The trademarks "Dianetics" and "Scientology" are now similarly held by the Center. The higher level materials at issue in this suit have neither copyright nor trademark protection.

which are essentially identical to those offered by the Church.

In December 1983, Robin Scott, and two others (all of whom are unrelated to this action) stole certain higher level materials from Church offices in Copenhagen, Denmark. Danish authorities subsequently convicted Scott of burglary. While the stolen materials were returned, the Church maintains that copies were made and that the new church later acquired these copies. The district court found that the higher level materials offered to its adherents by the new church are "essentially identical" to the stolen Church materials.[3]

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3 The new church states that it began using its higher level materials in August 1983, before the Scott theft. It claims that Mayo, as the principal original author of the Church's materials, wrote the new church's materials from memory. It also asserts that the new church's materials differ from the Church's materials because they reflect "improvements" recently added by [Footnote Cont'd]

The present suit was filed on November 4, 1985. The Church states that, in late October 1985, it learned

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[Footnote 3 Cont'd]
Mayo. The district court rejected Mayo's testimony as not credible. "The court does not believe that anyone, even Mr. Mayo, could have reproduced from memory materials substantially identical to those stolen in Denmark from the church. The documents are too voluminous, too detailed and too nearly identical in substance and wording to have been created by Mr. Mayo without reference to the stolen documents."

The new church asserts that there is no evidence to link the new church to the Scott theft. The Church offered evidence to the district court of international phone calls by new church members around the time of the theft, and produced a handwritten memorandum in which defendant Harvey Haber, then a new church officer, referred to a conversation with a person alleged to be Ron Lawley, a colleague of Scott. The memo then records what appears to be a continuing series of negotiations involving an offer and counteroffer. The memo does not refer to any agreement between the negotiating parties. The Church's complaint alleges that the new church obtained the materials from Scott's colleagues in February 1984. Because we dissolve the injunction on jurisdictional grounds, we express no view whether the new church's materials are copies of the Church materials stolen by Scott.

that the new church intended to disseminate the contents of the materials stolen by Scott "in a non-confidential setting." Counsel for defendant Larry Wollersheim, a former Church adherent who has a pending California state tort action against the Church, had obtained copies of the higher level materials during the deposition of defendants Margaret Singer and Richard Ofshe. Singer had obtained the materials from defendant Leta Schlosser. Schlosser testified that she had received the materials from an adherent of the new church. On November 1, 1985, the Los Angeles Superior Court hearing Wollersheim's suit against the Church refused a Church request to seal its records including the Church's higher level materials. Three days later, the Church brought this suit in federal court against the new church, its principal

officers, Wollersheim, his counsel, and those allegedly involved in passing the materials to Wollersheim's counsel. The suit based jursidiction on the RICO claim and stated six pendent California state law claims including misappropriation of trade secrets.

The district court first granted a temporary restraining order preventing the state court plaintiff and the new church from disclosing the confidential materials. The court then conducted an evidentiary hearing lasting two days, and, on November 23, 1985, granted the Church the prelirinary injunction that prompted this appeal.

The injunction prohibited the new church, its officers "and those persons in active concert or participation with them or who are acting at their request or insistence . . . from using, distributing, exhibiting or in any way

publicly revealing" any version of certain enumerated higher level Church materials. The enjoined parties were required to return all such material in their possession to the court under seal. The court also required the Church to post a bond of $100,000.

In supplementary findings of fact, the district court stated that it "views this as a stolen document case." The court recognized that both parties accepted that adherents must be exposed to the materials in strict progression. On this basis, the court concluded that Church adherents may suffer irreparable harm from the unsupervised dissemination of the materials, thus justifying preliminary injunctive relief. In additional comments from the bench, the district court held the materials to constitute a misappropriated trade secret but noted that the Church was not arguing

commercial disadvantage as an injury. The court also recognized its jurisdiction under RICO "based on the idea that the documents were stolen and that they found their way into their present use."

The new church filed a timely appeal. We denied the new church a stay pending appeal, but heard the appeal on an expedited schedule. We have jurisdiction under 28 U.S.C. §1292(a)(1).

STANDARD OF REVIEW

Determining whether a private remedy should be afforded for violation of duties mandated by a statute that does not expressly create a suitable private remedy causes the concepts of "standing," "subject matter jurisdiction," and "implication of a private cause of action" to "overlap . . . even more than they ordinarily would. National Railroad

Passengers, 414 U.S. 453, 455-56 (1974). The issue is best described as falling within the generic problem of "federal jurisdiction" without attempting to characterize it with greater specificity. See generally 13 C. Wright, A. Miller, and E. Cooper, Federal Practice and Procedure §3531.6 at 494-506 (2d ed. 1984). We are obligated to raise a jurisdictional issue sua sponte as a threshold question before considering a matter on its merits. See Solano v. Beilby. 761 F.2d 1369, 1370 (9th Cir. 1985); Othman v. Globe Indemnity Co., 759 F.2d 1458, 1462-63 (9th Cir. 1985). Interpretation of the statute under which an injunction has been issued is a question of law, which we review de novo. California ex rel. Van de Kamp v. Tahoe Regional Planning Agency, 766 F.2d 1308, 1312 (9th Cir. 1985). We review matters of state law de novo. In re McLinn, 739

F.2d 1395, 1403 (9th Cir. 1984) (en banc).

I. Is Injunctive Relief Available to a Private Party in a Civil RICO action?

A.

The Church's basis for federal jurisdiction is 18 U.S.C. §1964 ("civil RICO").[4] Civil RICO permits both the government and private plaintiffs to sue for violations of substantive provisions of the Racketeer Influenced and Corrupt Organizations Act, which formed Title IX of the Organized Crime Control Act of 1970, Pub. L. 91-452, 84 Stat. 941

4 The Church's complaint alleges federal jurisdiction under RICO, 18 U.S.C. §1964. The complaint also alleges jurisdiction under 28 U.S.C. §§1332 and 1339, covering diversity, patent, trademark, and copyright matters, and pendent jurisdiction over several state claims. The parties are not diverse, both being California corporations. The complaint makes no substantive allegations of patent, copyright, or trademark infringement. Thus, RICO provides the only basis for federal court jurisdiction over the Church's complaint.

(1970), as amended, codified as 18 U.S.C. §§1961-1968. Neither party questioned before the district court, nor in briefs before this court, whether injunctive relief is available under civil RICO. We ordered the parties to submit supplemental briefs on this issue.

Civil RICO is directed at "racketeering activity," which it defines as any act "chargeable" under several generically described state criminal laws; any act "indictable" under numerous specific federal criminal provisions, including mail and wire fraud; and any "offense" involving narcotics or bankruptcy or securities fraud "punishable" under federal law. 18 U.S.C. §1961(1). Civil RICO prohibits the use of income derived from a "pattern of racketeering activity" in relation to an "enterprise" engaged in or affecting interstate commerce. 18 U.S.C. §1962

(a). A "pattern" of racketeering activity "requires at least two acts of racketeering activity." 18 U.S.C. §1961(5). Broad criminal penalties are provided for RICO violations. See 18 U.S.C. §1963. In addition, Congress provided for a civil enforcement scheme, including private treble damages actions. See 18 U.S.C. §1964.

Despite repeated efforts by courts to limit the reach of civil RICO private damages actions, it is clear that suits alleging the requisite predicate acts are entitled to federal court jurisdiction, even if the acts are of a common-garden variety far removed from what is normally regarded as "organized crime" activity. See Sedima, S.P.R.L. v. Imrex Co., 105 S. Ct. 3275, 3284-85 (1985) (civil RICO suit may be based on commercial contract dispute involving two allegations of mail and wire fraud; civil RICO jurisdiction

requires no prior criminal convictions for predicate acts nor any showing of "racketeering injury.") The Church's complaint alleges that the higher level materials are the Church's trade secret which the new church misappropriated through several acts of mail or wire fraud constituting a pattern of racketeering activity.[5] The complaint characterizes the contacts between the new church and Wollersheim and his counsel as a conspiracy within RICO's definition of "enterprise." The Church's complaint also includes a claim for money damages under RICO. Thus, the Church

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5 The new church characterizes the predicate acts as the Copenhagen burglary and the receipt of the stolen materials. It argues that since the theft was not punishable in the United States, it cannot be a predicate act, and thus the Church has not demonstrated a pattern of racketeering. Even if the Danish theft falls outside RICO, the Church alleges sufficient telephone and mail contacts between the new church and Scott's group to satisfy the pattern requirement through several predicate acts of mail and wire fraud.

apparently satisfies the federal jurisdictional requirements for a civil RICO damages action.[6]

B.

No appellate court has expressly

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6 While the complaint states a claim for money damages, at the hearing on the motion for the preliminary injunction, the Church denied that it had suffered financially from the new church's behavior. Rather, the Church characterized its injury as the harm caused to its adherents from premature, unsupervised exposure to the higher level materials. It is not clear whether such an injury is sufficient to allow the Church to press even a civil RICO damages action.

In Sedima, the Supreme Court stated that "the plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation . . . . Where the plaintiff alleges each element of the violation, the compensable injury necessarily is the harm caused by predicate acts sufficiently related to constitute a pattern, for the essence of the violation is the commission of those acts in connection with the conduct of an enterprise." 105 S. Ct. at 3285-86. The district court found such a "nexus" between the Scott theft and the new church. The court did not expressly find a further nexus between the new church's [Footnote Cont'd]

determined whether civil RICO permits a private party to secure injunctive relief. The Fourth Circuit has implied that injunctive relief is not available to a private civil RICO plaintiff, but reserved ultimate judgment on the matter. See Dan River, Inc. v. Icahn, 701 F.2d

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[Footnote 6 Cont'd]
actions via the predicate acts and the injury to the Church adherents. Sedima apparently requires such a nexus for civil RICO damages "standing."

Assuming that this nexus can be established, the injury alleged by the Church may not be compensable under civil RICO. In a footnote in Sedima, the Court explains that civil RICO damages "include, but are not limited to . . . competitive injury." 105 S. Ct. at 3286 n.15. In disagreeing with the dissent's attempt to limit civil RICO standing, Sedima apparently embraces the notion that "harm proximately caused by the forbidden conduct" is compensable. Id. The court gives no indication whether non-financial proximate harm, such as the emotional-type injury alleged by the Church, is compensable under civil RICO. Since we are reviewing only the injunctive relief granted to the Church, we need not decide this issue. However, if the action proceeds to trial on the Church's damages claim, the district court will then be obliged to confront the problem.

278, 290 (4th Cir. 1983) ("While we do not undertake to resolve the question . . . [i]n light of the most recent indications from the Supreme Court, Dan River's action for equitable relief under RICO might well fail to state a claim."). In dictum in a moot appeal in Trane Co. v. O'Connor Securities, 718 F.2d 26, 28 (2d Cir. 1983) the Second Circuit stated: "We have the same [serious] doubts [as courts such as the Fourth Circuit in Dan River] as to the propriety of private party injunctive relief . . . ." More recently, in Sedima, S.P.R.L. v. Imrex Co., 741 F.2d 482, 489 n.20 (2d Cir. 1984), rev'd, 105 S. Ct. 3275 (1985), the Second Circuit observed that "[i]t thus seems altogether likely that §1964(c) as it now stands was not intended to provide private parties injunctive relief." However, the precedential value of this conclusion,

itself somewhat equivocal, is thrown into considerable doubt by the Supreme Court's total rejection of the conclusions drawn by the Second Circuit from its historical analysis of the RICO statute. See 105 S. Ct. 3275.

In contrast, the Eighth Circuit, expressly without resolving the issue, has hinted that injunctive relief may be available either under civil RICO or under a court's general equitable powers. See Bennett v. Berg, 685 F.2d 1053, 1064 (8th Cir. 1982) (citing a law review article which supports the availability of injunctive relief), aff'd on rehearing, 710 F.2d 1361 (8th Cir.) (en banc), cert. denied, 464 U.S. 1008 (1983).[7] See also USACO Coal Co. v.

7 The Eighth Circuit panel cited Blakey and Gettings, Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts - Criminal and Civil Remedies, 53 Temple L.Q. 1014, 1038 nn. 132-33 (1980) (statutory language provides for equitable relief). 685 F.2d at 1064.

Carbomin Energy, Inc., 689 F.2d 94, 97-98 (6th Cir. 1982) (affirming grant of injunctive relief to private plaintiff on pendent state claims where RICO provided federal jurisdiction base).

A similar disunity of views exists among those district courts that have confronted the issue. The only three published decisions explicitly to hold that injunctive relief is not available to a civil RICO plaintiff are all from the Northern District of Illinois. See Miller v. Affiliated Financial Corp., 600 F. Supp. 987, 994 (N.D. Ill. 1984); DeMent v. Abbott Capital Corp., 589 F. Supp. 1378, 1382-83 (N.D. Ill. 1984); and Kaushal v. State Bank of India, 556 F. Supp. 576, 581-84 (N.D. Ill. 1983). See also Ashland Oil, Inc. v. Gleave, 540 F. Supp. 81, 85-86 (W.D.N.Y. 1982) (statutory attachment not available to private civil RICO

plaintiff).

Two district courts have held that injunctive relief is available to a private civil RICO plaintiff. See Aetna Casualty and Surety Co. v. Liebowitz, 570 F. Supp. 908, 910-11 (E.D.N.Y. 1983), aff'd on other grounds. 730 F.2d 905 (2d Cir. 1984); and Chambers Development Co. v. Browning-Ferris Industries, 590 F. Supp. 1528, 1540-41 (W.D. Pa. 1984). Additionally, several district courts have simply assumed the availability of injunctive relief to civil RICO plaintiffs. See USACO Coal Co. v. Carbomin Energy, Inc., 539 F. Supp. 807, 814-16 (W.D. Ky.), aff'd on other grounds. 689 F.2d 94 (6th Cir. 1982); Marshall Field & Co. v. Icahn, 537 F. Supp. 413, 420 (S.D.N.Y. 1982); Vietnamese Fishermen's Association v. Knights of the Ku Klux Klan, 518 F. Supp. 993, 1014 (S.D. Tex. 1981).

Still other district courts have raised, but managed to avoid deciding the issue. See McLendon v. Continental Group. Inc., 602 F. Supp. 1492, 1518-19 (D.N.J. 1985) ("The law [in this area] is in great flux."); Kaufman v. Chase Manhattan Bank, N.A., 581 F. Supp. 350, 359 (S.D.N.Y. 1984).

Thus, we must decide essentially as a matter of first impression for an appellate court whether injunctive relief may be granted to a private plaintiff under civil RICO. When interpreting a statute, the plain meaning of the words used is controlling absent "a clearly expressed legislative intent to the contrary." United States v. Turkette, 452 U.S. 576, 580 (1981) (quoting) Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980)); Powell v. Tucson Air Museum Foundation of Pima County, 771 F.2d

1309, 1311 (9th Cir. 1985). When the language of a statute is ambiguous, we construe the statute in the light of Congress's purpose in enacting it as expressed in the legislative history. See Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1, 9-10 (1976).

C.

Section 1964 has four parts.[8] Part

---

8 18 U.S.C. §1964 states:

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court

(c) was added late in RICO's legislative passed by the Senate included only the present parts (a), (b), and (d). See infra pages 19-20; Sedima, 105 S. Ct. at 3280-81.

Part (a) is a broad grant of equitable jurisdiction to the federal courts. Part (b) permits the government to bring actions for equitable relief.

[Footnote 8 Cont'd]
shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

Part (d) grants collateral estoppel effect to a criminal conviction in a subsequent civil action by the government. Part (c), the private civil RICO provision, states that a private plaintiff may recover treble damages, costs and attorney's fees. In contrast to part (b), there is no express authority to private plaintiffs to seek the equitable relief available under part (a).

Admittedly, part (c) also does not expressly limit private plaintiffs "only" to the enumerated remedies, nor does part (a) expressly limit the availability of the illustrative equitable remedies to the government. See Strafer, Massumi, and Skolnick, Civil RICO in the Public Interest: "Everybody's Darling," 19 Am. Crim. L. Rev. 655, 710 (1982). However, the inclusion of a single statutory reference to private

plaintiffs, and the identification of a damages and fees remedy for such plaintiffs in part (c), logically carries the negative implication that no other remedy was intended to be conferred on private plaintiffs.

As the Supreme Court has emphasized, Congress expressly admonished that RICO "be liberally construed to effectuate its remedial purposes," and that " [t]he statute's 'remedial purposes' are nowhere more evident than in the provision of a private action for those injured by racketeering activity." Sedima, 105 S. Ct. at 3286; see also, Turkette, 452 U.S. at 587. In this spirit, those sympathetic to a private equitable remedy under civil RICO have suggested two other readings of the statute. The Church urges us to adopt either or both of these constructions of section 1964.

First, the Church suggests that it

is significant that the treble damage clause of section 1964(c) is preceded by "and" rather than "to." Thus, it is suggested, all appropriate relief, including the equitable remedies of part (a), are available to private plaintiffs because there is no clear statutory limitation. Moreover, the Church argues, there is no good reason for Congress denying victims equitable relief while permitting them damages relief. See Blakey, The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg, 58 Notre Dame L. Rev. 237, 332 (1982); Blakey and Gettings, Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts - Criminal and Civil Remedies, 53 Temple L.Q. 1014, 1038 n.133 (1980). No court has accepted this reading. Indeed, two courts have been vehement in their rejection of this analysis. See Sedima, 741 F.2d at 489 n.20 ("rather

remarkable argument"); Kaushal, 556 F. Supp. at 582 ("bizarre and wholly unconvincing as a matter of plain English and the normal use of language."). See also infra note 11.

Second, the Church asserts that the variation in language used in parts (a) and (b) of section 1964 indicate that Congress did not intend to limit the inherent powers of federal courts to grant equitable relief in suitable cases. The argument is made that because part (b) grants the Attorney General the express power to seek temporary equitable relief, other parties are permitted to seek permanent equitable relief. Moreover, the Church contends, if the availability of equitable relief under section 1964 were determined solely by part (b), part (a) would become superfluous. See J. Fricano, Civil Rico--An Antitrust Plaintiff's

Considerations, in 1 Current Problems in Federal Civil Practice 827-28 (PLI, 1983); Chambers, 590 F. Supp. at 1540.

The Church develops this textual argument with particular vigor. It argues that part (a), alone of the subparts of section 1964, is general in theme and apparently unrestricted in application. Its plain words place no limit on the class or category of litigants who might avail themselves of the remedies it makes available under RICO. While the other subparts of section 1964 provide for specific relief to specific parties, the Church observes that they give no indication that part (a) is anything other than a simple and broad grant of jurisdiction. See Belgard, Private Civil RICO Plaintiffs Are Entitled to Equitable Relief under §1964(a), 2 RICO Law Rep. 537, 537-38 (1985). The Church reads section 1964(b)

as permission for the government to secure injunctive relief without satisfying the traditional equity tests of irreparable harm and inadequacy of alternative remedy at law. See United States v. Cappetto, 502 F.2d 1351, 1358-59 (7th Cir. 1974), cert. denied, 420 U.S. 925 (1975). Thus, the Church asserts, part (b) does not restrict RICO injunctive relief to the government, but merely sets aside for civil RICO cases the traditional rule that only a victim may enjoin a crime. See In re Debs, 158 U.S. 564, 582-84 (1895). Thus, the Church would have us read part (a) as sufficient for a federal court to grant an injunction to a private RICO plaintiff even if part (c) had never been added to section 1964.

This latter construction of section 1964 is certainly a plausible reading of the statutory language. However, our

review of Congress' intent in enacting civil RICO convinces us that the Church is incorrect. The legislative history mandates us to hold that injunctive relief is not available to a private party in a civil RICO action. The Supreme Court's apparent endorsement of the conclusion that we reach here reinforces this reading of the statute. See Sedima, 105 S. Ct. at 3280 ("The civil remedies in the bill passed by the Senate, S. 30, were limited to injunctive actions by the United States and became §§ 1964(a), (b), and (d).").

D

RICO has a long legislative lineage. The Organized Crime Control Act of 1970 was derived from S. 30, 91st Cong., 1st Sess., 115 Cong. Rec. 769 (1969). Title IX of the Act, RICO, was added to S. 30 by the Senate. The substance of Title IX was contained in an earlier

Senate bill, S. 1861, 91st Cong., 1st Sess., 115 Cong. Rec. 9, 568-71 (1969). See also 116 Cong. Rec. 591 (remarks of Sen. McClellan). Neither S. 1861 nor S. 30 contained a private civil cause of action. An earlier predecessor of RICO, S. 1623, 91st Cong. 1st Sess., 115 Cong. Rec. 6, 995-96 (1969), did contain a private civil cause of action based closely on the Clayton Act, providing explicitly for injunctive relief as well as for treble damages. S. 1623 §§ 3(c), 4(a). That bill was itself patterned on two earlier Senate bills, S. 2048 and S. 2049, 90th Cong. 1st Sess. (1967), both of which provided for private civil action similar to that in S. 1623. See generally, Belgard, 2 RICO Law Rep. at 538 (quoting relevant provisions of these bills).

The Senate Subcommittee on Criminal Laws and Procedures of the Senate

Committee on the Judiciary replaced S. 1623 with S. 1861 apparently in part because S. 1861 provided broader governmental civil relief, such as the investigative demand, and was in other ways a more comprehensive bill. See Hearings on Measures Relating to Organized Crime Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, 91st Cong., 1st Sess. 387-88, 407-08 (1969).

There were also a number of House predecessors to RICO which paralleled S. 30. See H.R. 19215, 91st Cong. 2d Sess. 116 Cong. Rec. 31, 914 (1970). H.R. 19215 included a more complete private cause of action section than that eventually inserted by the House, and explicitly allowed for private party injunctive relief.

While the Act for the most part originated in the Senate, the civil RICO

provision permitting suit by private persons, 18 U.S.C. § 1964(c), originated in the House. See Sedima, 105 S. Ct. at 3280. During hearings on S. 30 before the House Judiciary Committee, Representative Steiger proposed the addition of a Private treble damages action "similar to the private damage remedy found in the antitrust laws . . . . [T]hose who have been wronged by organized crime should at least be given access to a legal remedy. In addition, the availability of such a remedy would enhance the effectiveness of title IX's prohibitions." Organized Crime Control: Hearings on S. 30, and related proposals, before Subcommittee No. 5 of the House Committee on the Judiciary, 91st Cong., 2d Sess. 520 (1970) ("House Hearings"). The American Bar Association also proposed an amendment "based upon the concept of Section 4 of the Clayton Act." Id. at 543-44, 548, 559; see 116 Cong. Rec. 25,190-91 (1970);

Sedima, 105 S. Ct. at 3280-81.

Significantly, Representative Steiger's proposal, like those in the rejected Senate bills, provided explicitly for a private injunctive remedy under section 1964(a). House Hearings at 521 (subsection (c) of proposal of Rep. Steiger). The legislative history is silent as to why the subcommittee rejected this language and explicitly created only the private action for treble damages which was eventually enacted as section 1964(c). See 116 Cong. Rec. 25,190 (remarks of Sen. McClellan welcoming House addition of private treble damages remedy). The adopted statutory language was drawn from H.R. 19586, 91st Cong., 2d Sess. 56 (1970), one of the two House bills that paralleled S. 30. In choosing H.R. 19586 over H.R. 19215, the House apparently explicitly rejected a private

injunctive relief provision.

E.

The Church's argument rests on the assertion that the private treble damages remedy provided by section 1964(c) is additional to the equitable RICO remedies made available to private plaintiffs by section 1964(a). The legislative history offers some support for this thesis. Introducing the bill during House debate, the House sponsor, Representative Poff, stated:

> Courts are given broad powers under the title to proceed civilly, using essentially their equitable Powers, to reform corrupted organizations, for example, by prohibiting the racketeers to participate any longer in the enterprise, by ordering divestitures, and even by ordering dissolution or reorganization of the enterprise. In addition, at the suggestion of the gentleman from Arizona (Mr. Steiger) and also the American Bar Association and others, the committee has provided that private persons injured by reason of a violation of the title may recover treble damages in Federal courts--another example of the

> antitrust remedy being adapted for use against organized criminality.

116 Cong. Rec. 35,295 (1970) (emphasis added). Earlier, during Senate floor debate on the bill before the addition of the present section 1964(c), Senator McClellan, the bill's principal Senate sponsor, described the value of civil RICO thus:

> Since enactment of the Sherman Antitrust Act in 1890, the courts have used several equitable remedies . . . to implement the language of 15 U.S.C. sections 1 and 2. I believe, and numerous others have expressed a similar belief, that these equitable devices can prove effective in cleaning up organizations corrupted by the forces of organized crime.

Id. at 592.

However, two separate episodes from the history of civil RICO's legislative passage convince us that the conclusions the Church would have us draw from these congressional statements do not reflect Congress' intent in section 1964. First,

the House rejected an amendment, described as "an additional civil remedy," which would expressly permit private parties to sue for injunctive relief under section 1964(a). Second, in the very next year after RICO's enactment, Congress refused to enact a bill to amend section 1964 and give private plaintiffs injunctive relief.

During debate on the House floor, Representative Steiger offered an amendment that would have allowed private injunctive actions, fixed a statute of limitations, and clarified venue and process requirements. 116 Cong. Rec. at 35,346; see also id. at 35,227-28.[9] The proposal was greeted

9 Representative Steiger's amendment was very specific. The present section 1964(c), the private treble damages remedy, which the House had already agreed to add to the bill, and the present part (d), concerning collateral estoppel, would become parts (e) and (g) respectively of section 1964. [Footnote Cont'd]

with some hostility because it had not been reviewed in committee, and Representative Steiger withdrew it without a vote being taken. Id. at 35,346-47. Representative Steiger's

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[Footnote 9 Cont'd]
116 Cong. Rec. at 35,346. The new part (c) proposed by Representative Steiger read:

> (c) Any person may institute proceedings under subsection (a) of this section. In any proceeding brought by any person under subsection (a) of this section, relief shall be granted in conformity with the principles which govern the granting of injunctive relief from threatened loss or damages in other cases. Upon the execution of proper bond against damages from an injunction improvidently granted and a showing of immediate danger of irreparable loss or damage, a preliminary injunction may be issued in any action before a determination thereof upon its merits.

Id. A new part (d) would permit the government to sue for damages; proposed part (f) would allow government intervention in Private suits of "general public importance"; and proposed part (h) provided for a five year statute of limitations tollable during the pendency of a government or private suit on a similar matter. Id

withdrawal was in response to remarks by the bill's House sponsor. Representative Poff stated:

> Mr. Chairman, I want to pay special tribute to the gentleman in the well for having raised the issue which his amendment defines. It does offer an additional civil remedy which I think properly might be suited to the special mechanism fashioned in title IX. Indeed, I am an author of an almost identical amendment. It has its counterpart almost in haec verba in the antitrust statutes, and yet I suggest to the gentleman that prudence would dictate that the Judiciary Committee very carefully explore the potential consequences that this new remedy might have in all the ramifications which this legislation contains and for that reason, I would hope that the gentleman might agree to ask unanimous consent to withdraw his amendment from consideration with the understanding that it might properly be considered by the Judiciary Committee when the Congress reconvenes following the elections or some other appropriate time.

Id. at 35,346 (emphasis added). The House then passed the bill, with the treble damages provision in the form recommended by the Committee. Id. at

35,363-64. The Senate did not seek a conference and adopted the bill as amended in the House. Id. at 36,296.

In the next term of the Senate, the same amendment as that offered by Representative Steiger on the House floor during debate on the RICO bill, see supra note 9, was proposed as a bill to amend the now enacted legislation. S. 16, 92nd Cong., 1st Sess. (1971). See Victims of Crime, Hearing before the Subcommittee on Criminal Laws and Procedures of the Senate Committee of the Judiciary, 92nd Cong., 1st Sess. 3 (1972). The new bill "would expand the available civil remedies" since " [n]ow only the United States can institute injunctive proceedings." Id. at 158. (Statement of Richard Velde, Associate Administrator, Law Enforcement Assistance Administration) (emphasis added).[10]

10 While post- [Footnote Cont'd]

The Senate Judiciary Committee reported favorably on S. 16, 92d Cong., 2d Sess., 118 Cong. Rec. 29,368-69 (1972). The committee report noted that RICO as enacted, provided for private treble damages actions, and that the new bill would supplement this and "authorize private injunctive relief from racketeering activity." S. Rep. No. 1070, 92d Cong., 2d Sess. 10 (1972) (emphasis added). During Senate floor debates on S. 16, Senator McClellan observed that the bill would add to existing private RICO remedies by "authoriz[ing] private injunctive relief from racketeering activity." 118 Cong. Rec. 29,370 (1972). See also id. (remarks of Senator Hruska). Although the Senate passed S. 16, the bill never

[Footnote 10 Cont'd]
enactment legislative history is not by any means conclusive, it cannot merely be ignored, North Haven Board of Education v. Bell, 456 U.S. 512, 530-35 (1982).

passed the House, and its substance never became law.

The clear message from the legislative history is that, in considering civil RICO, Congress was repeatedly presented with the opportunity expressly to include a provision permitting private plaintiffs to secure injunctive relief. On each occasion, Congress rejected the addition of any such provision.

F.

This clear message is reinforced by recalling that civil RICO was intended to provide a private cause of action modeled on the analogous provision of the antitrust laws. See 116 Cong. Rec. 592 (remarks of Sen. McClellan); id. at 602 (remarks of Sen. Hruska) (RICO's civil provisions employ "time-tested antitrust

remedies") S. Rep. No. 617, 80-82, 125, 160 (1969); 116 Cong. Rec. 35,295 (Private treble damages provision is "another example of the antitrust remedy being adapted for use against organized criminality.") (remarks of Rep. Poff); House Hearings at 543-44 (testimony of ABA President Wright); Sedima, 105 S. Ct. at 3282 ("The clearest current in [the legislative] history is the reliance on the Clayton Act model . . . .").

The language of the treble damages antitrust remedy, section four of the Clayton Act, 15 U.S.C. §15(a), is similar to that of civil RICO.[11] The

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11 15 U.S.C. §15(a) provides in pertinent part:
[A]ny person who shall be injured in his business or Property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the
[Footnote Cont'd]

Supreme Court has explicitly held that the language of section 4 precludes private injunctive relief. See Paine Lumber Co. v. Neal, 244 U.S. 459, 471 (1917). Cf. Minnesota v. Northern Securities Co., 194 U.S. 48, 70-71 (1904) (no private right to injunctive relief under section 4 of Sherman Act). Private antitrust plaintiffs can, however, secure injunctive relief only by virtue of a separate section of the

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[Footnote 11 Cont'd]
amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee." (Emphasis added.)

It should be noted that this provision includes the word "and" before stating the remedy. It was the inclusion of this word in civil RICO that prompted the Church and some commentators to conclude that civil RICO permitted private injunctive relief. See supra page 18. The fact that the Clayton Act treble damages provision does not extend to private injunctive relief, even with the "and" included, surely undermines the argument that its inclusion in section 1964(c) indicates that injunctive relief is not precluded by that section.

Clayton Act which expressly provides for private equitable actions. See Section 16 codified at 15 U.S.C. §26.[12] RICO contains no parallel provision to section 16's grant of a private right to injunctive relief.

Presumably, had it desired to do so, Congress could have completed the analogy between civil RICO and the antitrust laws by including in civil RICO a private equitable relief remedy like section sixteen of the Clayton Act. That it did not do so, despite the repeated efforts of several members of Congress, strongly suggests that Congress did not intend to give private civil RICO plaintiffs access

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12 15 U.S.C. §26 provides in pertinent part: Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, [Footnote Cont'd]

to equitable remedies.[13]

G.

Further support for the conclusion that injunctive relief is not available under civil RICO is found in the Supreme Court doctrine that sharply limits the implication of causes of action or remedies not expressly provided by statute.

[Footnote 12 Cont'd]
when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immdiate, a preliminary injunction may issue. A proviso to this section prevents an equitable suit against common carrier.

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13 The Church argues that comparisons with section 16 of the Clayton Act are inappropriate because the Clayton Act also includes a provision, section 15, 15 U.S.C. §25, expressly limiting injunctive relief to the government and thus the statutes--RICO and the Clayton Act--are not similar. See Belgard, 2 RICO Law Rep. at 541, n.13. See also
[Footnote Cont'd]

that injunctive relief is not available under civil RICO is found in the Supreme Court doctrine that sharply limits the implication of causes of action or remedies not expressly provided by statute.

> [I]t is an elemental canon of

[Footnote 13 Cont'd]
Fricano, Civil RICO at 828-29. This argument is to no avail. The legislative history shows that Congress recognized and accepted the validity of the comparison during the passage of RICO.

In his remarks on the House floor which prompted Representative Steiger to withdraw his late amendment specifically providing injunctive relief to a private RICO plaintiff, Representative Poff stated that Representative Steiger's amendment "has its counterpart almost in haec verba in the antitrust statutes." 116 Cong. Rec. 35,346. See supra page 25. Representative Poff must have been comparing Representative Steiger's abortive private injunctive relief provision to section 16 of the Clayton Act, the private antitrust injunctive relief provision. Thus, Congress was well aware that civil RICO was not symmetrical with the antitrust laws with respect to private injunctive relief. Congress' rejection of Representative Steiger's amendment is additional proof that Congress deliberately and knowingly excluded private injunctive relief from the arsenal of remedies created by RICO.

> statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it.

Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 19 (1979); see also Touche Ross & Co. v. Redington, 442 U.S. 560, 568 (1979).

Where a statute provides an elaborate enforcement scheme that confers authority to sue on both government officials and private citizens, "it cannot be assumed that Congress intended to authorize by implication additional judicial remedies for private citizens." Middlesex County Sewerage Authority v. National Sea Clammers Association, 453 U.S. 1, 14 (1981). "In the absence of strong indicia of a contrary congressional intent, we are compelled to conclude that Congress provided precisely the remedies it considered appropriate." Id. at 15. Compare Sea Clammers

(no private right of action implied in federal environmental statutes) with Herman & MacLean v. Huddleston 459 U.S. 375, 380-87 (1983) (implied remedy under securities law available because of congressional intent even where cumulative to express remedies).

For civil RICO, there are strong indicia of congressional intent against any implied injunctive relief remedy. Similarly, there is no indication in the language of section 1964 that civil RICO was not intended, as its plain wording states, to limit private plaintiffs only to damages, costs, and fees. Taken together, the legislative history and statutory language suggest overwhelmingly that no private equitable action should be implied under civil RICO.[14]

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14 The Church argues that a more appropriate test whether civil RICO implies a private right is that [Footnote Cont'd]

H.

Thus we conclude that Congress did not intend to give private RICO plaintiffs any right to injunctive

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[Footnote 14 Cont'd]
articulated in Cort v. Ash, 422 U.S. 66, 78 (1975). See Belgard, 2 RICO Law Rep. at 539. Cort posed four "relevant" questions to assist in determining "whether a private remedy is implicit in a statute not expressly providing one." Cort. 422 U.S. at 78. We see no conflict between Cort and the more recent line of Supreme Court cases upon which we rely. Applying the Cort factors still produces a ruling adverse to the Church. First, the Church is not one of the class for whose especial benefit the statute was enacted." Id. (emphasis in original). RICO was aimed principally at protecting the public from organized crime front enterprises, not at enabling a religious organization to prevent the dissemination of doctrinal materials by a rival religious organization. Second, as we have discussed, supra, there is substantial "indication of legislative intent, explicit and implicit" against an implied private remedy. Id. Third, while implying an injunctive remedy may be consistent generally with RICO's purpose, in this particular case, we doubt whether this is so. Id. Fourth, to the extent that the dispute here concerns trade secrets misappropriation, "it would be inappropriate to infer a cause of action based solely on federal law." Id.

relief. In reaching this conclusion, we recognize that strong policy arguments can be made to support a right to injunctive relief for private RICO plaintiffs.

It may be that in drawing the line between private equitable relief and private damages, Congress wished to preclude federal courts from interfering with the day-to-day running of businesses at the behest of what might be only a disgruntled competitor. However, this same concern about anticompetitive litigation has been frequently leveled at RICO's treble damages provision. The Supreme Court, despite expressing sympathy for this concern, has rejected it as not consistent with the statute's wording and history. See Sedima 105 S. Ct. at 3277-78.

In contrast, we recognize the force of the Church's argument that a private

injunctive remedy would permit an injured party to put an immediate stop to racketeering behavior that threatens his or her business with economic destruction before the business has been brought to its knees. While the treble damages remedy is a potent weapon, it necessarily assumes that economic injury has occurred. The preventive effect of injunctive relief is often a more just remedy. Although civil RICO empowers the government to bring an injunctive suit to protect a threatened enterprise, we recognize that the resources of the United States Attorney's office are limited. Civil RICO deliberately created dual avenues of enforcement--private and public. We recognize that precluding enforcing parties from employing the weapon of equitable relief partially hamstrings the statute's effect. "Private attorney general provisions such

as §1964(c) are in part designed to fill prosecutorial gaps," Sedima, 105 S. Ct. at 3284, and use of equitable remedies by private parties would frequently result in substantial benefits to society generally. These broad social benefits, such as the dismantling of an illegitimate enterprise, would generally exceed the gain to the private plaintiff from this action, especially where the individual's injury has been ameliorated by treble damages.

Even so, while, on balance, it may well have been desirable for Congress to have extended to private parties the right to injunctive relief under civil RICO, we are convinced that Congress chose not to do so, and we must respect and follow that judgment.[15]

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15 Since the remedy granted to the Church by the district court was beyond the jurisdiction of the court, it is not necessary for our resolution of this [Footnote Cont'd]

II. Can Religious Materials constitute

[Footnote 15 Cont'd]
appeal to reach the additional jurisdictional questions whether the Church had standing to assert its adherents' "religious injury" caused by the new church's alleged conduct and whether the dispute was ripe for resolution by the court. See Liberty National Insurance Holding Co. v. Charter Co., 734 F.2d 545, 553 n.19 (11th Cir. 1984); Raypath, Inc. v. City of Anchorage, 544 F.2d 1019, 1021 (9th Cir. 1976) (per curiam) (if no cause of action can exist, the case should be dismissed before reaching the issue of standing).

By resolving this appeal on jurisdictional grounds we avoid deciding the significant first amendment issues raised by the district court's injunction. For example, the effect of the injunction's prohibition on the use of any of the higher level materials is to curtail the religious practice of the new church's adherents. See Sherbert v. Verner, 374 U.S. 398 (1963). Similarly, the court's review of the Church's stolen materials and the new church's documents to determine whether essential elements have been appropriated raises the potential for impermissible entaglement in matters of religious doctrine. See Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Further, the court's recognition of "religious injury" from premature unsupervised exposure to Church materials as irreparable arm justifying an injunction prompts worrisome establishment concerns. See Lemon v. Kurtzman, 403 U.S. 602 (1971).

a Protectible Trade Secret?

The Church's complaint included several pendent California state law claims, including misappropriation of trade secrets. Even though the Church is not entitled to injunctive relief under RICO, we must also decide whether it is entitled to the same relief under state law. See USACO, 689 F.2d at 97-98 (affirming on state law grounds an injunction which district court had issued where RICO provided the jurisdictional base).

"The maintenance of standards of commercial ethics and the encouragement of invention are the broadly stated policies behind trade secret law." Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 481 (1974); Chicago Lock Co. v. Fanberg, 676 F.2d 400, 404-05 (9th Cir. 1982). States may regulate trade secrets only to the extent that state law

does not conflict with federal copyright and patent laws. Kewanee, 416 U.S. at 479. We review matters of state law de novo. McLinn, 739 F.2d at 1403.

Before 1985, California trade secrets law was based on Restatement of Torts §757, comment (b) (1939). The leading California case prior to the present legislation adopted verbatim the Restatement's definition of trade secret:

> It is now settled that a trade secret may consist of any formula, pattern, devise or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

Sinclair v. Aquarius Electronics, Inc., 42 Cal. App. 3d 216, 221, 116 Cal. Rptr. 654, 658 (1974) (emphasis omitted); see also Chicago Lock, 676 F.2d at 404; 7 B. Witkin, Summary of California Law, Equity §82 (8th ed. 1974

and Supp. 1984). The Restatement (Second) of Torts omitted section 757 and any reference to trade secrets. In response, a Uniform Trade Secrets Act was drafted. California adopted this uniform Act, with minor changes, in 1985. See 14 U.L.A. 537, 538-40 (1980 and 1985 Supp.); M. Jager, Trade Secrets Law, §3.04 (1985); 3 R. Milgrim, Milgrim on Trade Secret App. AA (1985).[16]

California law now defines a trade secret as:

> information, including a formula, pattern, compilation, program, devise, method, technique, or process, that:
>
> (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

16 Because the new church's alleged trade secrets' misappropriation spanned the effective date of the California statute, both old and new law must be applicable to sustain the injunction. SeeCal. Civ. Code §3426.10.

> (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Cal. Civ. Code §3426.1(d) (West Supp. 1986).

The district court held that the Church's higher level materials were a trade secret. The court relied heavily on the Church's concededly elaborate efforts to maintain the secrecy of its materials. However, the Church's contention that the disputed materials are "religious scripture" was not reconciled with the California statute's reference to "economic value" as an element of a protectible trade secret.

To be protectible as a trade secret under either Restatement section 757 or the new California statute, the confidential material must convey an actual or potential commercial advantage, presumably measurable in dollar terms.

We do not accept that a trade secret can be based on the spiritual advantage the Church believes its adherents acquire over non-adherents by using the materials in the prescribed manner. Former Restatement §757 defines trade secrets as information which is "used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it." (Emphasis added). See also 1 Milgrim §2.02 ("An element common to the definitions [of trade secret] is actual use of the secret in a trade or business.") (emphasis added); Klitzke, Trade Secrets: Important Quasi-Property Rights, 41 Bus. Lawyer 555, 559 (1986) ("Information that can have no commercial value cannot be the subject of trade secret protection."); Commissioners' Comment to §1 of Uniform Act, 14 U.L.A. at 543 ("The definition includes

information that has commercial value from a negative viewpoint . . . [A] trade secret need not be exclusive to confer a competitive advantage . . . ."") (emphasis added).

No published California decision has yet construed Civ. Code §3426.1(d)'s definition of trade secret. In the only significant effort by any state court to construe the Uniform Act's definitional reference to "independent economic value," the Minnesota Supreme Court stated: "This statutory element carries forward the common law requirement of competitive advantage. . . . This does not mean . . . that the owner of the trade secret must be the only one in the market. . . . If an outsider would obtain a valuable share of the market by gaining certain information, then that information may be a trade secret if it is not known or readily ascertainable."

Electro-Craft Corp. v. Controlled Motion, Inc., 332 N.W.2d 890, 900 (Minn. 1983) (emphasis added). We think it probable that the California courts will follow the Minnesota Supreme Court's view because of the wording of the California criminal law equivalent of Civ. Code §3426.1(d). Cal. Penal Code §499c(a)(9) (West Supp. 1986) states: "'Trade secret' means . . . information. . . . which is secret and which is not generally available to the public, and which gives one who uses it an advantage over competitors who do not know of or use the trade secret." (Emphasis added) See People v. Serrata, 62 Cal. App. 3d 9, 22, 133 Cal. Rptr. 144, 152 (1976) ("The phrase 'advantage over competitors' [in Cal. Pen. Code §499c] refers to any form of commercial advantage." (emphasis added)).

In its supplementary findings of

fact, the district court noted that the new church offers its services to its adherents at a price "substantially less than that charged by the Church." However, the Church alleged no competitive market advantage from maintaining the secrecy of its higher level materials. Indeed, to do so would raise grave doubts about its claim as a religion and a not-for-profit corporation. Rather, the Church alleges that its precepts require adherents to be audited in a structured manner with exposure to higher level materials only when the auditor considers the adherent ready. The injury inflicted on the Church by the new church's misappropriation of its "secret" is the "religious harm" that would be suffered by Church adherents from premature unsupervised exposure to the materials. The value of the confidential materials

is thus spiritual not commercial, and the materials cannot be said to have the "independent economic value" necessary to qualify as a protectible trade secret.[17]

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17 The Church relies heavily on language in Purcell v. Summers, 145 F.2d 979, 985 (4th Cir. 1944) which states that unfair competition law applies fully to religious and not-for-profit organizations. That case involved an injunction under South Carolina law for the improper use of a church's name by a splinter church. The Methodist Episcopal Church South had merged with two other churches to form the United Methodist Church. Dissident members who opposed the merger formed their own church using the former name. The Fourth Circuit held that the property and charitable gifts of the merged church would be threatened by the use of its former name by a different church.

Purcell does not involve trade secrets. Rather, it is an example of "the common law of trademark infringement and unfair competition (which) is replete with cases holding that benevolent religious, charitable or fraternal organizations are entitled to injunctive relief protecting against the continued use of their name by local chapters which disaffiliate." United States Jaycees v. San Francisco Junior Chamber of Commerce, 354 F. Supp. 61, 71 (N.D. Cal. 1972) (citing numerous cases), aff'd 513 F.2d 1226 (9th Cir. 1975) (per curiam).

III. Conclusion

The Church was not entitled to an injunction either under civil RICO or under California trade secrets law. We therefore dissolve the injunction forthwith.

REVERSED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RELIGIOUS TECHNOLOGY CENTER and CHURCH OF SCIENTOLOGY INTERNATIONAL, INC.,	NO. 85-6547 D.C. No. CV 85-7197-MRP
Plaintiffs-Appellees,	ORDER
vs.	
LARRY WOLLERSHEIM, et al.,	
and	
CHURCH OF THE NEW CIVILIZATION, HARVEY HABER, DEDE REISDORF, JON ZEGEL and DAVID MAYO,	
Defendants-Appellants.	

Before: PREGERSON, POOLE, and THOMPSON, Circuit Judges.

The panel as constituted above voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and

no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P.35 (b).

The petition for rehearing is denied, and the suggestion for hearing enbanc is rejected.

APPENDIX C

1964. Civil Remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section.

In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgement or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall

estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

(c) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(d) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

APPENDIX D

United States Constitution:

Amendment 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment 5.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness

against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 14.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(3)

Supreme Court, U.S.
FILED
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CLERK

No. 86-1123

In The

Supreme Court of the United States

October Term, 1986

RELIGIOUS TECHNOLOGY CENTER, a California corporation, and CHURCH OF SCIENTOLOGY INTERNATIONAL, INC., a California corporation,

Petitioners,

v.

JON ZEGEL, an individual; DAVID MAYO, an individual; CHURCH OF THE NEW CIVILIZATION (dba ADVANCED ABILITY CENTER), a California corporation,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Can a church use RICO to obtain an injunction that prohibits the church's "enemies" from practicing similar religious beliefs?

2. Does the first, fifth or fourteenth amendment of the United States Constitution require state law to afford trade secret protection to religious scriptures that lack commercial value?

RULE 28.1 LIST

Counsel of Record for Respondents Church of the New Civilization, David Mayo and Jon Zegel certifies that there are no known parties interested in the outcome of this case other than those participating in the case, except various affiliates and adherents of Religious Technology Center and Church of Scientology International, Inc.

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No. 86-1123

In The
Supreme Court of the United States
October Term, 1986

RELIGIOUS TECHNOLOGY CENTER, a California corporation, and CHURCH OF SCIENTOLOGY INTERNATIONAL, INC., a California corporation,

Petitioners,

v.

JON ZEGEL, an individual; DAVID MAYO, an individual; CHURCH OF THE NEW CIVILIZATION (dba ADVANCED ABILITY CENTER), a California corporation,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

A. THE FACTS

This case involves a religious dispute between two factions of the Scientology religion. Petitioners' complaint alleges that Respondents are "apostates and enemies of the religion of Scientology" who were engaged in "an apparent scheme to confuse or spread spiritual injury among Scientologists."

Petitioners are the Religious Technology Center ("RTC") and its "Mother Church," the Church of Scientology International, Inc. RTC views itself as "the protector of the Religion," responsible for maintaining "the purity and ethical use of the technology [religious doctrine], and for the protection and proper delivery of the Advanced Technology."

Respondents are the Church of New Civilization, its founder, David Mayo, and one of its former officials, Jon Zegel. Prior to founding the Church of New Civilization, Mayo was a high ranking member of the Church of Scientology for nearly 25 years. His duties included "auditing" and technical research and writing.

Scientology is a religion of "auditing." An "auditor" puts an individual through a series of procedures; the individual's responses are noted by use of an electronic metering device; further procedures are applied; and ultimately the individual rids his/her unconscious mind of "engrams," traumatic impressions previously recorded in this or earlier lives. *See generally Founding Church of Scientology v. United States*, 409 F.2d 1146, 1151-54 (D.C. Cir.), *cert. denied*, 396 U.S. 963 (1969). The auditing process is the "technology" of the religion, and the writings that set forth that "religious philosophy and spiritual healing technology comprise the scriptures of the religion."

Petitioners believe that parishioners must advance through the auditing process in defined stages and that religious harm is caused if the advanced religious doctrine is disclosed "at an improper stage." Petitioners say that for that religious reason and to preserve "the purity of the technology," not for any commercial pur-

pose, the advanced doctrine is kept confidential. This case concerns the advanced religious doctrine contained in scriptures known as the "NOTS pack."

Mr. Mayo developed the NOTS materials in 1978, in the course of a series of auditing sessions of Mr. Hubbard. Mr. Mayo thereafter extensively used the NOTS material for years in the course of his religious duties.

In 1982-83 there were disagreements among the leaders of the Church of Scientology, and the Church purged itself of dissidents. Mr. Mayo was one of them. He was kept under guard for six months, and he was told that he would be excommunicated unless he confessed that his criticisms were ill-advised, that he was a government "plant" and that he had committed alleged crimes. He refused. He was then declared to be an enemy of the church and excommunicated.

Following his excommunication, in July 1983, Mr. Mayo established the Church of the New Civilization, which provides religious counseling and training similar to that provided by the Church of Scientology. Mr. Mayo and others created a set of upper level scriptures for the new church. Respondents' witnesses swore that that material came from a variety of sources and from memory. Respondents began using their advanced scriptures in August 1983, and they had provided advanced religious instruction according to those scriptures for two years before the district court enjoined them from doing so.

In December 1983, three NOTS packs were stolen from an affiliate of Petitioners in Denmark. Contrary to Petitioners' statement (Pet. 6), there is no evidence—none—that Respondents aided or participated in that

theft, knew of it in advance or had anything to do with it. Moreover, the stolen physical property was returned to Petitioners by those who took it, and it is not involved in this case.

B. PRIOR PROCEEDINGS

On November 1, 1985, in a state court action against the Church of Scientology in which these Respondents are not involved, the court denied Petitioners' request to seal that court's records containing some of the scriptures involved here. Petitioners filed this action three days later.

Petitioners alleged that Respondents' religious scriptures were copied from the stolen NOTS packs, that Respondents were about to improperly disclose those scriptures to others and that disclosure would "confuse or spread spiritual injury among Scientologists." They asked the district court to restrain Respondents, the plaintiff in the state court action, his counsel, and others from making any public disclosure of the scriptures or using them in any way. Mr. Mayo denied under oath that the NOTS materials had been copied and swore that Respondents never had and "didn't want" Petitioners' materials.

The district court granted Petitioners' request for a temporary restraining order, but denied their motion for a preliminary injunction. Petitioners then renewed their motion and the court issued the preliminary injunction on November 23, 1985.[1]

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[1] Petitioners had previously brought another action against Respondents in January 1985, alleging essentially the same religious trade secret claims as are alleged here. *Religious Technology Center v. Robin Scott,* No. 85-711 (C.D. Cal.) Petitioners have never moved for an injunction in that case.

1. The District Court's Decision

There was no direct evidence to support the issuance of the preliminary injunction (or, indeed, any claim at all) against Respondents. Instead, the injunction was issued because the district court disbelieved Mr. Mayo's sworn testimony. It did not "believe" that "anyone, even Mr. Mayo" could have produced the religious teachings in Respondents' scriptures without reference to the stolen documents. Therefore, the court concluded: "I think that probably prima facie there is a RICO case here based on the idea that the documents were stolen and that they found their way into their present use." The court also concluded that the religious teachings in the documents were trade secrets under California law and that Petitioners would suffer irreparable religious injury from "any inadequately supervised disclosure of and use of the materials." (App. p. 8)

Accordingly, the court issued a broad preliminary injunction requiring Respondents to deliver their own religious materials to the court and prohibiting them

> from using, distributing, exhibiting or in any manner publicly revealing any and all originals, copies, retypings, recastings, variations of or altered versions of all confidential religious scriptures . . . or the contents thereof . . . .

(*Id.* at 3)

2. The Court of Appeals' Decision

The court of appeals reversed the injunction. Although it noted the serious first amendment issues created by an injunction that prevents one religious faction

from teaching religious doctrine claimed to be "owned" by another, 796 F.2d at 1089 n.15, it did not rest its decision on constitutional grounds. Instead it held that (1) civil RICO does not authorize injunctive relief and (2) as a matter of state law, the religious scriptures in dispute are not legally protectable trade secrets. 796 F.2d 1076 (9th Cir. 1986).

The court of appeals then denied petitions for rehearing and rehearing *en banc* (App. pp. 81-82) and a motion for a stay of its mandate. Petitioners did not seek a stay from this Court.

SUMMARY OF ARGUMENT

1. Petitioners contend that this Court should grant certiorari "based on a conflict of decisions among the circuits on the availability of injunctive relief to private plaintiffs under the RICO Act, and the overall importance of this issue." (Pet. 10) Petitioners' contention is wrong. The Court should deny the petition because:

a. There is no conflict in the circuits.

b. This religious dispute is a RICO case in name only; it is not an appropriate vehicle for deciding the propriety of private injunctive relief under RICO.

c. The question of private injunctive relief under RICO is not an important issue on which this Court should spend its time. In fact, the question rarely arises because RICO liability is purely derivative and injunctive relief is available based on the underlying predicate claims—if those claims have merit.

d. The decision below was correct; the statutory language and legislative history make clear that RICO does not give private parties an extra basis for seeking injunctive relief.

2. Petitioners also contend that the Court should grant certiorari "to reverse the Ninth Circuit's first impression ruling that religious materials, merely because they are owned by non-profit religious organizations, are not protectable under the California Trade Secret Act." (Pet. 10-11) This contention is wrong for two reasons:

a. The court of appeals made no such ruling. It held only that the religious scriptures involved in this case did not have the independent economic value necessary to qualify as a protectable trade secret under state law.

b. Neither the court of appeals' interpretation of state law nor Petitioners' factual arguments presents any constitutional question or any other issue of interest to this Court.

REASONS FOR DENYING THE WRIT

I. THE DECISION THAT RICO DOES NOT AUTHORIZE PRIVATE INJUNCTIONS DOES NOT WARRANT THIS COURT'S REVIEW

A. THERE IS NO CONFLICT IN DECISIONS

1. The Courts of Appeals

Petitioners say the decision below conflicts with other circuit decisions. (Pet. 10, 23-32) This is not true. The

Ninth Circuit found that this was "a matter of first impression for an appellate court." 796 F.2d at 1082. And so it is. Petitioners refer to three cases. None conflicts with this one.

Petitioners concede that *Bennett v. Berg,* 685 F.2d 1053, 1064 (8th Cir. 1982), *aff'd on rehearing en banc,* 710 F.2d 1361, *cert. denied,* 464 U.S. 1008 (1983), "did not decide" whether equitable relief is available to private plaintiffs. (Pet. 26)

Petitioners nevertheless argue that in *Bennett,* "the Court determined that ['legal writers'] had concluded that equitable relief was available." (Pet. 26-27) If the court had made such a determination that, of course, still would not present any conflict in decisions by the courts of appeals. But it did no such thing; instead, the court simply "note[d] for the information of the parties and the district court such scholarship as [it] ha[d] discovered." 685 F.2d at 1064. That consisted of a single law review article, and overlooked the wealth of commentary supporting the decision below in this case. (*Infra* p. 21 n.9)[2]

Petitioners also cite *Aetna Casualty & Sur. Co. v. Liebowitz,* 730 F.2d 905 (2d Cir. 1984) (Pet. 25), but it does not conflict with the decision below, either. *Aetna* concerns the propriety of attorney's fees in a RICO action that had been settled after a preliminary injunction was issued. The district court held that "analysis of whether plaintiff was entitled to injunctive relief under

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[2] Petitioners also rely on the concurring paragraph of a single judge on rehearing *en banc,* 710 F.2d at 1365-66, to assert a conflict with the decision below. One judge's sentiment hardly suggests a conflict in the circuits.

§ 1964 is not . . . necessary for a determination of this [attorneys' fees] motion," 570 F. Supp. 908, 910 (E.D. N.Y. 1983), and noted that the issue "appears at least to be an open question." *Id.* at 911. Similarly, the Second Circuit addressed injunctive relief only long enough to presage the Ninth Circuit: civil RICO "does not refer to injunctive relief." 730 F.2d at 909.

Moreover, even if *Aetna* held what Petitioners contend it did, that is not the definitive Second Circuit view. In *Trane Co. v. O'Connor Sec.,* 718 F.2d 26, 28 (2d Cir. 1983), another Second Circuit panel said that "courts which have confronted the issue have expressed serious doubt concerning the propriety of granting injunctive relief under any circumstances to private parties. . . . We have the same doubts." And still another Second Circuit panel in *Sedima, S.P.R.L. v. Imrex Co.,* 741 F.2d 482, 489 n.20 (2d Cir. 1984), *rev'd on other grounds,* 473 U.S. 479, 105 S. Ct. 3275 (1985), found it "altogether likely that § 1964(c) as it now stands was not intended to provide private parties injunctive relief." Thus, *Aetna* creates no conflict in the circuits because it is not the law of any circuit. *See Davis v. United States,* 417 U.S. 333, 340 (1974).

Petitioners' reference to *Dan River, Inc. v. Icahn,* 701 F.2d 278, 290 (4th Cir. 1983) (Pet. 28), is difficult to understand, for they concede that the court there used the same analysis as the court of appeals here and found "substantial doubt" that RICO grants private parties equitable relief. Thus, *Dan River* supports the decision below.

In short, there is no conflict among the circuits.

2. The District Courts

A conflict in decisions between a court of appeals and a district court or between district courts is not a basis for this Court's review. S.Ct. Rule 17.1(a); R. Stern, E. Gressman & S. Shapiro, *Supreme Court Practice* § 4.8 (6th ed. 1986).

Moreover, only one district court has held even arguably contrary to the Ninth Circuit. *Chambers Dev. Co. v. Browning-Ferris Indus.*, 590 F. Supp. 1528, 1540-41 (W.D. Pa. 1984) (Pet. 31). As Petitioners concede, the *Chambers* court simply "declined to strike a prayer for equitable relief"; nothing more. (Pet. 31) Moreover, *Chambers* rests on RICO's "remedial purpose," *id.* at 1540—a purpose that does not support the implication of private injunctive relief. *See infra* p. 21.

Petitioners try to explain away the fact that every other district court decision on point comports with the decision below by saying each "was decided prior to this Court's decision in *Sedima.*" (Pet. 31) But Petitioners do not explain why that matters, and it does not. *Sedima's* approach to statutory interpretation was precisely the one followed by the court of appeals here: RICO should be applied as Congress wrote it and not judicially rewritten. *Sedima*, 105 S.Ct. at 3287. In any event, the fact remains that the few district court decisions addressing the issue are consistent with the opinion below. *See Miller v. Affiliated Fin. Corp.*, 600 F.Supp. 987, 994 (N.D. Ill. 1984); *DeMent v. Abbott Capital Corp.*, 589 F.Supp. 1378, 1382-83 (N.D. Ill. 1984); *Kaushal v. State Bank of India*, 556

F.Supp. 576, 581-84 (N.D. Ill. 1983); *Ashland Oil, Inc. v Gleave,* 540 F. Supp. 81, 84-86 (W.D.N.Y. 1982).[3]

Thus, there is no meaningful conflict in decisions on the question Petitioners tender. The question has not yet reached any other court of appeals, and the dicta so far solidly support the court of appeals' decision here. In these circumstances, this Court should decline to review the issue. *See, e.g., McCray v. New York,* 461 U.S. 961, 962 (1983) (Stevens, J.) ("further consideration of the substantive and procedural ramifications of the problem by other courts will enable us to deal with the issue more wisely at a later date").

B. THIS IS NOT THE CASE TO DECIDE WHETHER RICO AUTHORIZES PRIVATE INJUNCTIONS

If this Court wishes to decide whether RICO authorizes private injunctions, it should do so in a case that has at least some relation to the matters RICO typically concerns. This is not that case, to say the least. *See United States v. Shannon,* 342 U.S. 288, 294 (1952) (Frankfurter, J.) (urging dismissal of writs because "they were legal sports. Each presents a unique set of circumstances. Neither is likely to recur; both are individualized instances").

RICO has been applied in two major categories; this case presents neither. First, as Petitioners acknowledge, a

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[3] Both *Marshall Field & Co. v. Icahn,* 537 F. Supp. 413, 420 (S.D.N.Y. 1982) and *Vietnamese Fisherman's Ass'n v. Knights of Ku Klux Klan,* 518 F. Supp. 993, 1014 (S.D. Tex. 1981) (Pet. 32), denied injunctive relief because there was no "likelihood of success." Neither court reached the issue raised here.

"primary objective of RICO [is] to curtail organized crime." (Pet. 15) There is not even a hint of organized crime here.

Second, forty percent of the published civil RICO decisions alleged securities fraud and thirty-seven percent common law fraud in a business or commercial setting. The remaining twenty-three percent include a variety of matters including traditional organized crime activities, antitrust and bribery. *Sedima*, 105 S. Ct. at 3287 at n.16 (citing *The Report of the Ad Hoc Civil RICO Task Force of the ABA Section of Corporation, Banking and Business Law* 55-56 (1985) ("ABA Report")). This dispute between religious factions over the use of religious doctrine is the antithesis of those cases.[4]

In short, RICO is neither designed for nor typically arises in the context of a religious dispute, and the facts and issues in this case are *sui generis*. Therefore, to use this case to resolve the need for and availability of private

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[4] Two cases did involve religious disputes, ABA Report, p. 56 n.61; neither was anything like this one. *Congregation Beth Yitzhok v. Briskman*, 566 F. Supp. 555, 557 (E.D.N.Y. 1983), involved a battle over the disposition of property belonging to a deceased rabbi. The court correctly noted "[t]he core of this litigation is an internecine dispute between rival religious factions. If there can be a case that should not be covered by the RICO statute, this is it." The court held that it could not adjudicate the controversy "without first wading deeply (and impermissibly) into religious issues," *id.* at 558; it therefore denied an injunction and dismissed the case for want of justiciability.

The second case, *Van Schaick v. Church of Scientology*, 535 F. Supp. 1125, 1135-39 (D. Mass. 1982) dismissed the RICO claims on pre-*Sedima* grounds, but also noted, on Petitioners' affiliates' urging, that RICO might not apply to religious entities.

injunctive relief under RICO would be inappropriate and even unfair to other litigants who face the issue in typical RICO settings.

Indeed, this case may not even present the question Petitioners assert, because, in fact, there is no genuine RICO claim here. RICO was an afterthought, raised only to confer federal jurisdiction. 796 F.2d at 1080 n.4. The lone basis for RICO is the district court's highly dubious refusal to believe that Respondents, who created the NOTS materials and had used them for years, could reproduce them without copying from stolen documents they swore they never saw. And, as the Ninth Circuit recognized, "[i]t is not clear whether [Petitioners' alleged] injury is sufficient to allow the Church to press even a civil RICO damages action." *Id.* at n.6.

Finally, even if this case were representative of RICO litigation, the record contains only the evidence that was compiled during the preliminary injunction hearing. The important factual issues, including those concerning the alleged conspiracy, are still to be resolved at the impending trial on the merits. Thus, this case does not present the kind of record that the Court can best utilize to evaluate the injunction question in a concrete context. *See Estelle v. Gamble,* 429 U.S. 97, 115 (1976) (Stevens, J., dissenting) ("the crude allegations of this complaint do not provide the kind of factual basis the Court normally requires"); *Wainwright v. City of New Orleans,* 392 U.S. 598 (1968) (Harlan, J., concurring in dismissal of certiorari) ("I find this record too opaque to permit any satisfactory adjudication of that question"); *Ellis v. Dixon,* 349 U.S. 458, 464 (1955) (dismissing certiorari because "[e]ven if we were to look at the matter ourselves *de novo,* we could not on this vague

and empty record decide the . . . issues sought to be presented").

C. THIS CASE DOES NOT PRESENT IMPORTANT QUESTIONS

Unable to demonstrate a conflict in the circuits, Petitioners argue that the question of private injunctive relief under RICO is important, "obviously, . . . of national significance." (Pet. 13) Petitioners overstate their case.

First, the question of injunctive relief arises far less often than Petitioners would have the Court believe. Over 270 RICO decisions have been published (*Sedima*, 105 S. Ct. at 3287 n.16) and the number of claims is undoubtedly much larger, yet only a dozen have even raised an injunction question. (*Supra* pp. 8-11)

Second, Petitioners' unhappiness with the doctrine of pendent jurisdiction is no ground for this Court to grant certiorari in this case. They argue that "[t]he existence of pendent party jurisdiction . . . [is] a subtle and complex question" (Pet. 17), and that "in light of some district courts' hostility to RICO, that uncertainty [over pendent jurisdiction] may altogether too often be resolved by throwing out the pendent claims." (Pet. 17-18) If true, that is no different than any other case where, if a district court errs, it can be corrected. That is no basis for review here.

Moreover, Petitioners' fears have nothing to do with this case. The district court in this case accepted the pendent state trade secrets claim, reviewed state law and made a decision on both the RICO and the pendent state

claim. (App. pp. 9-11) This Court should hardly review this case because in some future case a district court might improperly fail to do what this district court did.

Third, Petitioners' fear of the "specter (sic) of inconsistent results" and forum shopping is misplaced. (Pet. 20-21) Their argument is premised either on a conflict that does not exist (*supra* pp. 7-11) or on the diversity of state laws that is inherent in our federal system. Neither is a reason for certiorari.

D. THE DECISION BELOW WAS CORRECT

This is not the occasion to argue the merits, but because Petitioners rely primarily on their substantive views (Pet. 33-45), we respond briefly. The court of appeals conducted a scholarly and extensive analysis of RICO's language and legislative history and concluded that RICO does not authorize private injunctions. Both the analysis and the conclusion are sound.

1. Statutory Language

Petitioners say a "dispassionate reading" of RICO "leads ineluctably" to the conclusion that Section 1964 included equitable relief for private parties. (Pet. 33) In fact, no reading of Section 1964—passionate or otherwise—will uncover any mention of private equitable relief.

The remedies for violations of RICO are contained in Section 1964. Section 1964(a) is a general jurisdictional grant. Section 1964(b) specifically authorizes injunctive relief, but only in actions brought by the Attorney General. This Court has recognized that neither sub-section (a) nor sub-section (b) provides any private remedy:

> The civil remedies in the bill passed by the Senate, S. 30, were limited to injunctive actions by the United States and became §§ 1964 (a), (b), and (d).

Sedima, 105 S. Ct. at 3280.

The only other remedial provision is Section 1964(c), which provides:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

18 U.S.C. § 1964(c) (1984). That language not only omits any provision for private injunctive relief, it is the same language that Congress knew had been definitively interpreted to *exclude* injunctive relief under the antitrust laws. *See* 796 F.2d at 1086-87.

Thus, Congress enacted a detailed remedial scheme that pointedly omits any private injunctive remedy. To imply such a remedy would be contrary to established principles of statutory interpretation.[5] *See* 796 F.2d at 1087-88 & n.14; *Middlesex County Sewerage Auth. v. National Sea Clammers Ass'n,* 453 U.S. 1, 15 (1981) ("Congress provided precisely the remedies it considered appropriate"); *Northwest Airlines, Inc. v. Transport Workers Union,* 451 U.S. 77, 97 (1981) ("The presumption that a remedy was deliberately omitted from a statute is strong-

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[5] *Herman & MacLean v. Huddleston,* 459 U.S. 375, 386 (1983) (Pet. 37) does not reject *expressio unius est exclusio alterius.* There the Court found evidence of a specific congressional intent to cumulate remedies.

est when Congress has enacted a comprehensive legislative scheme including an integrated system of procedures for enforcement'').

Thus, there is nothing in the language of the statute authorizing private injunctions.

2. Legislative History

Petitioners complain that the Ninth Circuit looked to legislative history. (Pet. 35) But since there is no authorizing statutory language, private injunctions under RICO could be judicially created only on the basis of supporting legislative history. That history, however, makes clear that Congress did not intend to authorize private injunctive relief. First, although several pre-RICO bills provided for private injunctive relief, none was enacted. *See* 796 F.2d at 1084.

Second, an amendment that would have expressly provided for private injunctions was presented, but was not enacted. *Id.* at 1084-85. Petitioners argue that the amendment proposing private injunctive relief ''was withdrawn, *not* defeated.'' (Pet. 42) But that does not matter. It was withdrawn for the very reason Petitioners deny here: because ''[i]t does offer an additional civil remedy'' that Congress was not prepared to adopt without further consideration. 796 F.2d at 1086. *See* 116 Cong. Rec. at 35,346 (1970).

Third, in the first session of Congress after RICO was enacted, unsuccessful efforts were made to add a provision giving private parties the right to seek injunctive relief. 796 F.2d at 1086. Petitioners argue that ''the views of a subsequent Congress form a hazardous basis for

inferring the intent of an earlier one" (Pet. 44), but this is not evidence of Congress' original intent; it is proof that Congress recognized that RICO does not now contain injunctive relief. *See, e.g., North Haven Bd. of Educ. v. Bell,* 456 U.S. 512, 530-35 (1982); *Texas Indus. v. Radcliff Materials, Inc.,* 451 U.S. 630, 645 (1981) ("the continuing existence of this statutory scheme for 90 years without amendments authorizing contribution is not without significance"); *United States v. Rutherford,* 442 U.S. 544, 554 n.10 (1979) (where "construction has been 'fully brought to the attention of the public and the Congress,' and the latter has not sought to alter that interpretation . . . then presumably the legislative intent has been correctly discerned") (quoting *Apex Hosiery Co. v. Leader,* 310 U.S. 469, 489 (1940).

Thus, the legislative history confirms the statutory language: Congress intentionally omitted any provision for private injunctive relief.[6]

3. Policy

Finally, Petitioners submit that RICO *should* include private injunctive relief. But:

a. That is not the issue. The issue is whether it *does. Touche Ross & Co. v. Redington,* 442 U.S. 560, 578

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[6] Petitioners argue that RICO's liberal construction clause precludes examination of the legislative history, citing *Brown v. Barry,* 3 U.S. (2 Dall.) 365, 367 (1797) (Pet. 36). *Brown* merely states the obvious point that legislative intent prevails over abstract rules of construction. That is all the more reason to examine what Congress intended.

Furthermore, Petitioners' own cases confirm that "Congress' perception of the law that it was shaping" is determinative. *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Curran,* 456 U.S. 353, 378 (1982). (Pet. 29-30 n.5)

(1979) ("The ultimate question is one of congressional intent, not one of whether this Court thinks that it can improve upon the statutory scheme that Congress enacted into law"); *Sedima,* 105 S. Ct. at 3287 (warning against "statutory amendment [in]appropriately undertaken by the courts"). Furthermore, if amendment is desirable, Congress is the place to make it, and Congress is actively considering that suggestion. In the last session of Congress alone, at least eleven RICO bills were introduced, one of which would specifically add a private right of injunctive relief. H.R. 4892, 99th Cong., 2d Sess. 5 (1986). This Court should not preempt that congressional decision making.

b. Congress' initial decision makes sense. Its provision of a treble damages remedy but not injunctive relief was carefully tailored to the situation.[7] As the ABA Report determined, "it is difficult to conclude that a genuine need for equitable relief cannot be met adequately through traditional equitable actions under state law. This being the case, there seems little reason to expand Civil RICO beyond its express terms to provide a further avenue for such relief." (ABA Report, pp. 339-40) (citations omitted). *See, e.g., USACO Coal Co. v. Carbomin Energy, Inc.,* 539 F.Supp. 807, 814-16 (W.D. Ky.), *aff'd on other grounds,*

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[7] *See, e.g.,* 116 Cong. Rec. at 35,346 (1970) (quoted at 796 F.2d at 1086) ("prudence would dictate that the Judiciary Committee very carefully explore the potential consequences that this new remedy might have in all the ramifications which this legislation contains"). Thus, as the court below noted, "[i]t may be that in drawing the line between private equitable relief and private damages, Congress wished to preclude federal courts from interfering with the day-to-day running of businesses at the behest of what might be only a disgruntled competitor." 796 F.2d at 1088.

689 F.2d 94 (6th Cir. 1982) (granting injunction on pendent state claims). Thus, because RICO liability is always derivative from the predicate criminal acts, injunctive relief is available—if the merits support it—in virtually every case.[8]

Nor is Congress' limitation on the available remedies peculiar to RICO. To the contrary, it has imposed similar limitations under many other statutes. *See, e.g., National R.R. Passenger Corp. v. National Ass'n of R.R. Passengers,* 414 U.S. 453, 456-65 (1974) (no private injunctions under Amtrak Act); *T.I.M.E. Inc. v. United States,* 359 U.S. 464, 470-71 (1959) (Interstate Commerce Act); *Lockerty v. Phillips,* 319 U.S. 182, 186-89 (1943) (upholding provision of Emergency Price Control Act withholding lower court authority to enjoin enforcement); *Sprague v. Ticonic Nat'l Bank,* 307 U.S. 161, 164-65 (1939) (Congress may modify courts' equitable jurisdiction); *Lauf v. E.G. Shinner & Co.,* 303 U.S. 323, 329-30 (1938) (upholding Norris-La Guardia Act denial of injunctive relief); *Cell Assocs., Inc. v. National Instits. of Health,* 579 F.2d 1155, 1159-60 (9th Cir. 1978) (denying injunctive relief under Privacy Act which limits private plaintiff remedies to damages, costs and attorney's fees); *International Tel. & Tel. Corp. v. General Tel. & Elecs. Corp.,* 518 F.2d 913, 920-26 (9th Cir. 1975) (private Clayton Act remedies limited to specifically authorized equitable relief and not divestiture available to the government); *Chrisman v. Sisters of St. Joseph,* 506 F.2d 308, 311 (9th Cir. 1974) ("The Supreme Court has consistently upheld restrictions placed on the ability of

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[8] Petitioners recognize that private injunctive remedies will be available on the pendent claims if the district court exercises its discretion to accept pendent jurisdiction. (Pet. 17-18)

the inferior courts to issue injunctive relief with respect to designated causes of action").

c. Petitioners' reliance on RICO's "remedial purposes" (Pet. 37) misses the mark. As this Court has held: "the mere fact that [the statute] was designed to provide protection for [the plaintiff class] does not require the implication of [an additional remedy] in their behalf." *Touche Ross*, 442 U.S. at 578. *Accord, Securities & Exch. Comm'n v. Sloan*, 436 U.S. 103, 115-16 (1978) (general reference to "statute's remedial purposes" does not justify reading Act "more broadly than its language and the statutory scheme reasonably permit"); *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 200-01 (1976) (rejecting construction more consistent with "remedial purposes" because "the language of a statute controls when sufficiently clear in its context").[9]

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[9] Petitioners' claim that "most" commentators "reject the suggestion . . . that the statute denies to the courts the power to grant all forms of needed relief" (Pet. 13-14 n.2) is simply untrue. *See, e.g.*, Weissman, *In the High Stakes Game of Civil RICO, Can Private Claimants Raise the Ante Even Further with Claims for Equitable Relief?* 1 RICO L. Rep. 234 (1984) ("the stronger arguments favor a finding that equitable relief is not available to private RICO claimants"); Bridges, *Private RICO Litigation Based Upon "Fraud in the Sale of Securities,"* 18 Ga. L. Rev. 43, 74 (1983) ("Although some commentators and plaintiffs urge that RICO allows private injunctive relief, their arguments are incorrect"); Fricano, *Civil RICO: An Antitrust Plaintiff's Considerations*, 52 Antitrust L.J. 361, 374 (1983) ("arguments may be made on both sides of the issue"); Note, *Civil RICO: The Temptation and Impropriety of Judicial Restriction*, 95 Harv. L. Rev. 1101 (1982) (no discussion of injunctive relief); Long, *Treble Damages for Violations of the Federal Securities Laws: A Suggested Analysis and Application of the RICO Civil Cause of Action*, 85 Dickinson L. Rev. 201 (1981) (no discussion of injunctive relief); Blakey & Gettings, *Racketeer Influenced And Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies*, 53 Temple L.Q. 1009, 1007-21, 1047 (1980) (discussion of legislative history only).

Petitioners also argue that the lack of a private injunction "hamstrings the statute's effect" (Pet. 15) because district courts "will be unable to utilize injunctions to curtail ongoing continuing crime" (*Id.* at 22), and private parties won't "even bother to sue." (*Id.* at 21) Petitioners are just making up a problem that isn't there. Despite the fact that no court has issued a private RICO injunction, there has been a wealth of RICO litigation. *Sedima,* 105 S. Ct. at 3277 n.1. And, "[t]o the extent that injunctive relief is truly needed to dissolve organized criminal enterprises, the provision for equitable actions by the Attorney General should be adequate." (ABA Report, p. 340)

II. THE CALIFORNIA TRADE SECRETS LAW ISSUE DOES NOT WARRANT REVIEW

A. PETITIONERS MISSTATE THE DECISION BELOW

Contrary to Petitioners' characterization, the court of appeals did not hold that "religious materials, merely because they are owned by non-profit religious organizations, are not entitled to the protection afforded by the California trade secrets statute." (Pet. 45) Rather, the court held only that the religious scriptures in issue "cannot be said to have the 'independent economic value' necessary to qualify as a protectible trade secret" under California law. 796 F.2d at 1091. There is nothing remarkable about that decision. It concerns only state law and

fact issues,[10] and there is no reason why this Court should review it.

This Court does not review matters of state law. *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, —, 105 S.Ct. 2794, 2800 (1985) ("district courts and courts of appeal are better schooled in and more able to interpret the laws of their respective States"); *Butner v. United States*, 440 U.S. 48, 58 (1979) ("We decline to review the state-law question. The federal judges who deal regularly with questions of state law in their respective districts and circuits are in a better position than we to determine how local courts would dispose of comparable issues"); *Huddleston v. Dwyer*, 322 U.S. 232, 237 (1944) ("ordinarily we . . . do not review . . . the considered determination of questions of state law by the intermediate federal appellate courts").

Nor does the Court grant certiorari to review factual determinations. *Texas v. Mead*, 465 U.S. 1041, 1043 (1984) (Stevens, J.); *National Labor Relations Bd. v. Henricks County Rural Elec. Membership Corp.*, 454 U.S. 170, 176 n.8 (1981) (improvident grant of cross-petition that presented primarily a question of fact); *United States v. Johnston*, 268 U.S. 220, 227 (1925) ("[w]e do not grant a certiorari to review evidence and discuss specific facts").

B. THERE IS NO CONFLICT IN DECISIONS

Petitioners' attempt to create a conflict with the Fourth Circuit's aged decision in *Purcell v. Summers*, 145

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[10] This is apparent from Petitioners' effort to argue their interpretation of California law (Pet. 47-49) and their version of the facts. (Pet. 57)

F.2d 979 (4th Cir. 1944) (Pet. 11-12, 55-59), rests on their inaccurate description of the decision below. The court below decided only that California trade secret law did not apply to a particular set of facts. *Purcell* had nothing to do with either California trade secret law or these unique facts. In *Purcell,* the court simply prevented a dissident organization from using a church's *name.* 145 F.2d at 981. That is entirely different from this case, where Petitioners, in the name of religious purity, claim the exclusive right to religious *ideas.* And the Ninth Circuit explicitly said so. 796 F.2d at 1091 n.17.

Finally, even if there were a conflict, it is well settled that "[a]s to questions controlled by state law . . . conflict among circuits is not of itself a reason for granting a writ of certiorari. The conflict may be merely corollary to a permissible difference of opinion in the state courts." *Ruhlin v. New York Life Ins. Co.,* 304 U.S. 202, 206 (1938).

C. PETITIONERS' CONSTITUTIONAL CLAIMS ARE FRIVOLOUS

Petitioners' efforts to find a federal constitutional question in the decision below again rests on their misunderstanding of the decision and California law. The constitutionality of the California Trade Secrets Act was not, and is not, in issue, and the court below did not hold that religious organizations or materials can never receive trade secret protection. (Pet. 50, 61-62) Again, all it held was that the materials in issue—which happened to be religious materials—did not have the economic value required for trade secret protection. That raises no constitutional issue.

Petitioners say that because the decision "directly effects the manner in which Petitioners' religious beliefs are disseminated," it "[t]herefore" violates the free exercise clause. (Pet. 63) But that assumes that Petitioners have a monopoly on certain religious beliefs and the *exclusive* right to "exercise" those beliefs. No such right exists, and Respondents' use of the disputed scriptures does not interfere in any way with Petitioners' ability to use their similar scriptures. Petitioners' contention that *their* free exercise is violated by *other* people holding the same beliefs and practicing the same religion is absurd.[11]

In fact, Petitioners' first amendment analysis is off by 180 degrees. It is Petitioners who threaten Respondents' right to exercise their religion, not the other way around. As the court of appeals found, "the effect of the injunction's prohibition on the use of any of the higher level materials is to curtail the religious practice of [Respondents'] adherents." 796 F.2d at 1089 n.15. It also found that "the court's review of [Petitioners'] stolen materials and [Respondents'] documents to determine whether essential elements have been appropriated raises the potential for impermissible entanglement in matters

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[11] None of Petitioners' cases (Pet. 62) suggest how their free exercise is implicated. *See McDaniel v. Paty,* 435 U.S. 618 (1978) (state law barring ministers from seeking office is unconstitutional); *Gillette v. United States,* 401 U.S. 437 (1971) (cited by Petitioners as *Negre v. Larsen*) (upholding conviction under Military Selective Service Act against first amendment challenge); *Fowler v. Rhode Island,* 345 U.S. 67 (1953) (ordinance prohibiting political or religious addresses in park is unconstitutional); *Follett v. McCormack,* 321 U.S. 573 (1944) (ordinance requiring booksellers to pay license fee unconstitutional as applied to preacher selling religious books).

of religious doctrine." *Id.*[12] Finally, "the court's recognition of 'religious injury' from premature unsupervised exposure to Church materials as irreparable harm justifying an injunction prompts worrisome establishment concerns." *Id.* (citations omitted)[13]

The court of appeals recognized "the significant first amendment issues raised by the district court's injunction" (*Id.*); thus, it wisely and properly interpreted the Trade Secrets Act according to the legion of cases which hold that laws are to be construed to avoid, not create, such constitutional issues. *E.g., Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 348 (1936) (Brandeis, J., concurring) ("Court will first ascertain whether a construction of the statute is fairly possible by which the [constitutional] question may be avoided"). The court of appeals' interpretation of state law to avoid difficult federal constitutional issues was correct. There is no reason why this Court should get into that thicket.

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[12] In every religious trade secret case, the court would necessarily be embroiled in resolving issues concerning religious doctrine and practice. That is because a court could not find an infringement without determining what the religious secret was, its religious significance, and the religious significance of any differences between the secret as practiced by plaintiff and defendant. *Cf. Presbyterian Church v. Hull Church*, 393 U.S. 440, 450 (1969).

[13] The purpose of the injunction was to protect religious teaching from purported misuse; essential to that is a determination that Petitioners are the "true" holders of the secrets of the religion. The injunction's effect was to give Petitioners the exclusive right to practice and teach the upper levels of the parties' religion; that put the sovereign power of the court on the side of one particular church. *See First Presbyterian Church v. United Presbyterian Church*, 464 N.E.2d 454 (N.Y.), *cert. denied*, 469 U.S. 1037 (1984).

CONCLUSION

The petition should be denied.

February 5, 1987

Respectfully submitted,

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No. 86-1123

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

RELIGIOUS TECHNOLOGY CENTER, a California corporation, and CHURCH OF SCIENTOLOGY INTERNATIONAL, INC., a California corporation,
Petitioners,

vs.

JON ZEGEL, an individual; DAVID MAYO, an individual; CHURCH OF THE NEW CIVILIZATION (dba ADVANCED ABILITY CENTER), a California corporation,
Respondents.

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTORY STATEMENT

Petitioners hereby reply to Respondents' Opposition in order to correct certain material misrepresentations and to respond to arguments made for the first time.

Petitioners seek this Court's review on whether a private plaintiff is entitled

to injunctive relief under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1964 ("RICO"). (See Pet. 12-45) Petitioners also request this Court's determination of whether the Ninth Circuit's holding that Petitioners are not entitled to the protection of the California Trade Secrets Act unconstitutionally violates Petitioners' First, Fifth and Fourteenth Amendment rights. (See Pet. 45-65)

Respondents attempt to create confusion in order to convince this Court that the instant case is merely "a religious dispute between two factions of the Scientology religion." (Opp. 1) In truth, this case is purely and simply a stolen documents case. Respondents have never been prohibited from practicing any religious beliefs. The District Court's previous injunction only prohibited Respondents use of Petitioners'

stolen materials.[1]

Respondents also misrepresent the record in asserting that "there is no evidence - none - that Respondents aided or participated in that theft, knew of it in advance or had anything to do with it." (Opp. 3-4)

During a two day evidentiary hearing

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1. The stolen advanced or upper level materials at issue herein are referred to as NED for Operating Thetans ("NOTS"). The ideas and concepts that comprise the NOTS materials are a culmination of over 30 years of research and experience by the religion's founder, L. Ron Hubbard. Mr. Mayo did assist Mr. Hubbard's development of the NOTS materials, however, Mr. Mayo's role was limited to that of an "auditor" and compiler. [An auditor is a person who through Church training becomes skilled in the application of the religious technology of Scientology.]

Although Respondents have claimed that they "began using their advanced scriptures in August 1983" (Opp. 3), the materials which Respondents submitted to the District Court for comparison were all dated January 1984, one month after the theft of Petitioners' materials. (See Pet. 5, n.1).

It was these January 1984 materials which the District Court found could not have been created without reference to the Petitioners stolen materials.

on Petitioners' Motion For A Preliminary Injunction, the District Court was presented with an abundance of documentary evidence and oral testimony which, according to the Court, clearly established the nexus between the original thieves - Robin Scott, Ron Lawley and Morag Bellmaine - and the Respondents herein. The Court stated in its Further Findings that:

> The Court did not find the testimony of David Mayo credible on the issue of how he and the Advanced Ability Center came to have in their possession the documents in question in this lawsuit (i.e., those produced by the Advanced Ability Center ("AAC") for inspection by the Court.) The Court does not believe that anyone, even Mr. Mayo, could have reproduced from memory materials substantially identical to those stolen in Denmark from the Church. The documents are too voluminous, too detailed and too nearly identical in substance and wording to have been created by Mr. Mayo without reference to the stolen documents.
>
> The District Court, based on all the

evidence and facts before it and after appropriately applying neutral principles of law in its own in-camera comparison of the documents, determined that this was a stolen documents case which constituted a clear violation of the RICO Act. The Court further concluded that the documents at issue constituted trade secrets under California law.

II. THE AVAILABILITY OF INJUNCTIVE RELIEF UNDER RICO IS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT

Petitioners respectfully submitted in the Petition for Writ of Certiorari that the Ninth Circuit's determination that private injunctive relief is unavailable under RICO is an important question of federal law which has not been, but should be, settled by this Court. Rule 17.1(c). Respondents argue in opposition that the question is not important and that it "rarely arises because RICO liability is

purely derivative and injunctive relief is available based on the underlying predicate claims - if those claims have merit." (Opp. 6) This is a deceptively appealing but inaccurate statement and the Court need look no further than this very case for a demonstration of its falsity.

The underlying predicate acts alleged in this case consist of mail and wire fraud and interstate transportation of stolen propertly which present no independent basis for injunctive relief. This is so despite the fact that the Court of Appeals determined that Petitioners had adequately alleged a pattern of racketeering and had satisfied RICO's jurisdictional requirements. Moreover, the District Court found a likelihood of success with respect to the merits of Petitioners' claims. Under the Ninth Circuit's ruling, however, the merits of a party's underlying predicate RICO claims are irrelevant,

as is the nature of the party's injury even where it is irreparable.

Respondents' argument completely ignores important implications of the Ninth Circuit's restrictive interpretation. The goal of RICO, set forth in the "Statement of Findings and Purpose" of the Organized Crime Control Act of 1970, is "to seek the eradication of organized crime by strengthening the legal tools in the evidence gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." Pub. L. No. 91-452, 84 Stat. 923 (1970).[2]

The dramatic impact of the Ninth Circuit's decision on RICO's enforcement

2. As the Ninth Circuit itself recognized, precluding enforcing parties from employing injunctive relief hamstrings the statute's effect. (796 F.2d at 1089)

is already apparent. The point is classically illustrated by a recent RICO case in which the Federal Deposit Insurance Corporation (FDIC) sought to recover millions of dollars from defendants who allegedly drained the banks' assets through an extensive pattern of fraudulent conduct including a "heist money" scheme to use $3 million of the banks' assets in an attempt to purchase $9 million in stolen currency. Federal Deposit Insurance Corp. v. Antonio, No. 85-C-1298 (D.C. Colo. Dec 16, 1986). In response to the FDIC's request for an injunction based on RICO to enjoin defendants from disposing of or dissipating the assets pending trial on the merits, the District Court observed that courts remain divided on the availability of injunctive relief. Citing the Ninth Circuit's decision (but without actually deciding the issue), Judge

Carrigan warned that "Courts must be careful not to infer a right of action or remedy that Congress has not expressly created or clearly implied." Id. at 3.

Fortunately for the FDIC in this particular case, the Colorado Organized Crime Act, Col. Stat. 18-17-(106) ("COCA"), provided the Court with an alternate basis upon which it granted the injunction. This equitable parachute afforded by Colorado's RICO statute, however, represents the rare exception and not the rule. Out of 25 states that have "little RICO" statutes, only fourteen include fraud offenses as predicate acts and only seven expressly provide for private injunctive relief. 4 R.L.R. No. 5 at 660 (1986). Yet the problems RICO is intended to address are nationwide and the FDIC example is not unique.[3]

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3. For the fifth year in a row bank failures continue to break all past [Footnote Cont'd]

There is no doubt that the Ninth Circuit's ruling drastically limits the options available to all RICO victims. Not only will those victims be unable to use RICO to maintain the status quo and thereby preserve meritorious civil RICO claims, but even in the most egregious cases involving legitimate businesses infiltrated by organized crime, equitable relief will be unavailable under RICO. In view of RICO's remedial purposes "nowhere more evident than in the provisions of a private action for those injured by racketeering activities," the question of whether injunctive relief is also avail-

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[Footnote 3 Cont'd]
depression records at a rate of more than 100 a year. N.Y. Times, January 5, 1987, Col. 1 p.20. A recent congressional study concluded that criminal activity by insiders was a major contributing factor in one half of bank failures and a quarter of savings and loan failures. H.R. 137 98th Cong. 2nd. Sess. at (1984). In 1985 the Attorney General reported the cost of white collar crime as approximately 200 billion dollars a year. Annual Report of the Attorney General at 42 (1985).

able is extremely important and worthy of this Court's consideration. S.P.R.L. v. Imrex Co. Inc., 105 S.Ct 3275 (1985).

II. THIS CASE PROVIDES AN APPROPRIATE CONTEXT IN WHICH TO DECIDE THE AVAILABILITY OF PRIVATE INJUNCTIVE RELIEF UNDER RICO

Respondents contend that this is a RICO case in name only and that it would be unfair to other litigants to resolve the availability of injunctive relief at this juncture because this case is not typical of RICO litigation. This argument is intellectually dishonest.

First, Respondents' assertion that "in fact, there is no genuine RICO claim here" (Opp. 13) is at odds with the Ninth Circuit's express recognition that "the Church apparently satisfied the federal jurisdictional requirements for a civil RICO damages action." 796 F.2d at 1080. More important, however, is the fact that the availability of injunctive relief

under RICO is purely a matter of statutory interpretation. Resolution of this discreet question in no way turns upon the typicality of the particular RICO claims, the nature of the parties or the character of the predicate acts which constitute the alleged pattern of racketeering activity. Either private injunctive relief is available under RICO or it is not. The question is not "fact dependent" and its resolution one way or the other applies to all private parties be they banks, churches, corporate securities fraud victims or restaurants infiltrated by organized crime figure.[4] The complete bar to private injunctive

4. Respondents' complaint that the record contains "only the evidence that was compiled during the preliminary injunction hearing" (Opp. 13) misses the mark. The issue is as readily resolved in the context of a motion to dismiss in the absence of any facts as it is here where an evidentiary hearing was held. Respondents advance no reason why additional evidence which might be adduced during a trial on [Footnote Cont'd]

relief under RICO held by the Ninth Circuit applies to all parties. Accordingly, it is impossible to fathom Respondents' suggestion that a review of the issue in this case would be "unfair to other litigants who face the issue in typical RICO settings." (Opp. 13) Moreover, the Respondents' argument completely disregards this Court's recognition in Sedima, that RICO is to "be liberally construed to effectuate its remedial purposes". 105 S.Ct. 3275 at 3286. To let the Ninth Circuit's ruling stand unquestioned would be fair to no one.

Nothing in RICO's text or legislative history precludes Churches from relying upon RICO's remedial provisions when they are victims of racketeering activity. Given that Petitioners' RICO claims are

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[Footnote 4 Cont'd]
the merits would be necessary or helpful to determine whether preliminary injunctive relief is available in RICO cases.

predicated on allegations of interstate transportation of stolen property and mail and wire fraud, this case is sufficiently typical of RICO litigation for resolution of the injunctive relief question.[5] Resolution of the injunctive relief question does not require this Court to pass on the merits of the underlying dispute concerning ownership or the use of Church property or any question remotely constitutional in nature.

III. THE AVAILABILITY OF INJUNCTIVE RELIEF UNDER RICO IS RIPE FOR THE COURT'S REVIEW

Respondents give primary emphasis to their point that the Ninth Circuit is the only appellate court to have squarely

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5. As the District Court recognized, and the Court of Appeals did not dispute, this is a "stolen documents case". (App. A, 8) The mere fact that the parties ascribe a spiritual as well as an economic value to the property at issue does not negate the "business" or "commercial" aspects of Petitioners' RICO claims. ". . . the theft appears to have been as much for economic as for doctrinal reasons." (Id).

determined that private injunctive relief is not available under RICO and no appellate court has squarely found otherwise. (Opp. 7-10) This does not, of course, undermine the importance of the federal question nor does it satisfactorily explain why this Court should decline review at this time until a more direct conflict exists at the circuit level.

As Respondents concede, the issue has been extensively analysed by the Ninth Circuit and raised by the Second, Fourth and Eighth Circuits. (Opp. 8-9) Respondents do not suggest how further debate in the courts will bring the issue into any sharper focus. While the division among the district courts alone may not, in and of itself, mandate this Court's review, given the importance of the question and the haphazard manner in which it is being answered, Petitioners respectfully submit that judicial prudence

dictates it be resolved sooner rather than later.[6]

IV. THE APPELLATE COURT'S APPLICATION OF CALIFORNIA LAW VIOLATES PETITIONERS' CONSTITUTIONAL RIGHTS

In reviewing Petitioners' trade secret claim, the Ninth Circuit stated:

> In its supplementary findings of fact, the district court noted that the new church offers its services to its adherents at a price "substantially less than that charged by the Church". However, the church alleged no competitive market advantage from

6. The availability of injunctive relief has long been the subject of exhaustive debate by courts and commentators alike. Respondents citation to "the wealth of commentary" supporting the decision of the Ninth Circuit, however, is disingenuous. (Opp 8, 21 n.9) For example, the Report of the Ad Hoc Civil RICO Task Force of the ABA Section of Corporation, Banking and Business Law at p. 341 (1985), of which Mr. Weissman was Executive Director, supported the need for preliminary equity relief. Mr. Fricano's article was directly relied upon by the District Court in Chambers Dev. Co. v. Browning-Ferris Indus., 590 F.Supp. 1528, 1540-41 (W.D. Pa. 1984) (Court refused to dismiss claims for injunctive relief). Professor Blakey was quoted word for word by Judge McMillian of the Eight Circuit for the proposition that injunctive relief is available under RICO. (Pet. 27-28)

> maintaining the secrecy of its higher level materials. Indeed, to do so would raise grave doubts about its claim as a religion and not-for-profit corporation.
>
> . . .
>
> The value of the confidential materials is thus spiritual not commercial, and the materials cannot be said to have the "independent economic value" necessary to qualify as a protectible trade secret.

796 F.2d at 1091 (emphasis added).

The Court has thus construed the California Trade Secrets Statute to mean that a religious non-profit organization, such as Petitioners, is excluded from the protection afforded by the Act as a matter of law. Contrary to Respondents' assertions, Petitioners do not seek review of any factual or evidentiary determination arrived at below concerning whether Petitioners met the necessary elements of the statute. Nor do Petitioners seek review of the constitutionality of the California statute as written.

Rather, it is Petitioners' position that the Appellate Court's construction of the statute, as applied to Petitioners, is an unconstitutional violation of its Due Process and Equal Protection Rights.

The unequal application of a state statute which is fair on its face is clearly a denial of equal protection. The California Trade Secrets Statute is without question neutral on its face. Indeed, the Act provides that any legal entity is entitled to protection if (1) the trade secret is subject to reasonable efforts to maintain its secrecy, and (2) if it derives actual or potential independent economic value. (App. C, 86)

The Court of Appeals arbitrary and prejudicial determination denying Petitioners the protection afforded by the Act was based on the suspect classification of religion, which is clearly subject

to a "strict scrutiny" level of review. It is submitted that such a classification fails to serve any "compelling governmental interest" and therefore cannot constitutionally be allowed to stand.

Finally, Respondents' reliance on dictum within the Ninth Circuit's opinion concerning establishment clause concerns is misplaced. (Opp. 25). Because this is clearly a stolen documents case, Respondents cannot insulate their illegal activity by asserting protection under the First Amendment. Nevertheless, this Court has firmly established that civil courts may apply neutral principles of law to resolve church property disputes without violating first amendment guarantees. As this Court stated in Presbyterian Church v. Hull Church, 393 U.S. 440 (1969):

> It is obvious, however, that not every civil court decision as to property claimed by a religious

> organization jeapardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded.

Id. at 449. (See also, Pet 48-50)

V. CONCLUSION

Based on the reasons stated above, in addition to those in the original petition, Petitioners respectfully request that this Court grant Certiorari.

Dated: February 18, 1987

Respectfully submitted,

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